المملكة العربية السعودية
وزارة التعليم
جامعة الإمام محمد بن سعود الإسلامية
مركز التميز البحثي في فقه القضايا المعاصرة

THE SIMPLIFIED ENCYCLOPAEDIA OF CONTEMPORARY ISSUES IN ISLAM JURISPRUDENCE (FIQH)

JURISPRUDENCE OF MUSLIM MINORITIES

Prepared by
The center of Research Excellence in Contemporary Fiqh Issues

Translated and edited by
Osoul Global Center

1440AH,2018

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Kingdom of Saudi Arabia
Ministry of Education
The Islamic University of Imam Muhammad ibn Saud
Centre of Research Excellence in Contemporary Fiqh Issues

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The Centre

The Centre of Excellence in Research in Contemporary *Fiqh* Issues is one of the Centres established by the Ministry of Higher Education in Saudi Arabia. The Centre has been placed under the supervision of the Islamic University of Imam Muhammad ibn Saud which has continued to show a keen interest in Islamic *Fiqh* issues over a period extending more than half a century.

Establishment: The Centre was established on 10 Rajab 1428 AH, corresponding to 13 July 2008.

Vision: The Centre hopes to be a focal point for rulings on contemporary issues that need to have clear Islamic rulings. It will support research efforts, invest in specialized research and promote the pioneering role of Saudi Arabia in the area of Islamic *Fiqh*.

Mission: The Centre will provide suitable environment and research facilities to study newly emerging *Fiqh* issues in the light of a clear and scholarly system that gives full consideration to each issue, its details, conditions, effects and consequences. It will provide research training through courses, workshops and seminars that will improve the standards and capabilities of research and researchers.

Aims and objectives:

- The establishment of a clear scholarly system for the study of contemporary *Fiqh* issues. The system will be based on the main and essential sources and will ensure a full and comprehensive understanding of the issue under study, looking at all its dimensions.

- Taking the initiative to study new and contemporary *Fiqh* issues, and encouraging researchers to study such issues, providing support for such study and a suitable research environment.
- The publication, promotion and dissemination of studies undertaken by the Centre in all available facilities.
- The provision of scholarly advice to government departments and to the general public concerning the Islamic viewpoint of emerging issues.

Activities

The Centre will concentrate its activities in four main areas:

- Academic research
- Consultancy
- Training
- Seminars and conferences

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FOREWORD BY THE DIRECTOR OF THE OSOUL CENTRE

All praise be to God, the Lord of all the worlds, the Creator of the heavens and earth and all creatures living in them. May God grant peace and blessings to Prophet Muhammad, God's final Messenger, whose message brought mercy to all mankind. May He also give His blessings to all the prophets and messengers whom He sent to guide mankind out of darkness and into light.

Every new release we at Osoul Global Centre for Islamic Advocacy produce gives us a great opportunity to interact with our readers. All our releases have the same overall objective, namely presenting Islam to mankind, as it truly is. We wish people to be aware of Islam's fine aspects and profound teachings. We show clearly that it is the only faith that provides practical and effective solutions to all the problems faced by humanity. It gives clear and solid answers to all the questions that have troubled people over many generations, such as: How did we come into existence and why do we exist? Where do we go from here? Furthermore, it is the only religion that requires its followers to love and respect all the prophets God sent, particularly Moses and Jesus (peace be upon them both).

Our releases also refute the accusations levelled against Islam and clarify people's misunderstandings of Islamic teachings.

In all our releases, we take care to provide solid and rational proofs for our arguments so as to give our readers the reassurance they need. Our motive is to make this great divine faith known to people. It is, by God's grace, the fastest growing religion in our time, as confirmed by a study undertaken by the Pew Research Centre[1] and published in 2015.

This book is concerned with questions and problems faced by Muslim minorities in different countries. It is the fruit of a joint effort of the Centre of Research Excellence at the Islamic University of Imam

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[1] www.pewresearch.org

Muhammad ibn Saud and the Osoul Centre. The Centre of Research Excellence put together the contents of the book and the Osoul Centre undertook the task of its translation and production. Essentially, the book is addressed to Muslims in non-Muslim countries. It addresses many of the issues they are concerned with, putting before them how these issues are viewed from the Islamic perspective. The scholars who compiled the book relied on the views and rulings of a number of contemporary scholars as well as those of a number of Islamic institutions in various parts of the world. Thus the book presents the outcome of the scholarly endeavour undertaken by these scholars and institutions. Needless to say, these rulings are the outcome of human scholarship. They are not definitive texts that are universally applicable to all Muslims. Every Muslim is required to look carefully and make an effort to find out what may please God in whatever he may do or abstain from.

We hope that by producing this book in English we have put before our brethren in Muslim minorities a wealth of scholarship that they may rely on in their daily life, so as to ensure that their practices and attitudes are compatible with what Islam requires of its followers. We trust that the book meets an urgent need.

Executive Director,

Osoul Global Centre

Basel bin Abdullah Alfozan

2016 December

INTRODUCTION

All praise be to God, the Lord of all the worlds, and may He shower His blessings on Muhammad, His last Prophet and messenger.

Islamic law, the shari[ah, is the final code of law revealed by God, and it is suitable for all generations and places. Whatever changes human life goes through, Islamic law provides the right ruling for it. Life has witnessed great technological advances and civilizational expansion, and societies have drawn closer to one another as a result of easier communications. When we add to this other developments, such as the great variety of new jobs and means of livelihood and the unprecedented advances in the medical field, we understand how there are many cases that could not have been addressed by scholars of olden days, because they were totally unknown to them. Moreover, some questions discussed by past scholars now reflect some new facts of which those scholars were unaware. Other questions have undergone fundamental changes in their causes, results and features that affect the rulings given to them. These need to be considered anew, taking such new developments into account. All such questions come under the term ‘contemporary *Fiqh* issues’ which is the subject of focus at the Centre of Research Excellence.

It is to serve its objectives and fulfil its mission that the Centre presents this scholarly project of the Simplified Encyclopaedia of Contemporary Issues in Islamic Jurisprudence (*Fiqh*). It acquires some of the features of encyclopaedic work in the sense that it includes a great variety of questions. However, as it does not include all that has been written or said on every question, we have felt that it should be given a title that indicates its brevity, simple language and thematic order so as to make it easily accessible to all types of reader.

Objectives of the Simplified Encyclopaedia

Such objectives reflect the perspective of ‘producing a comprehensive work, based on collective effort, which presents concise information about contemporary *Fiqh* issues, arranged according to the main themes of *Fiqh*.' The most important of these objectives are:

1. Easy identification and conceptualization of contemporary issues and a summarized presentation of what contemporary scholars have said about them and the rulings they have given.
2. Ensuring that the Centre does not duplicate the efforts of scholars and research institutes in tackling contemporary *Fiqh* issues. To do so, it highlights these issues so that what has been thoroughly researched and what needs further discussion are clearly and separately identified.
3. Helping researchers to choose topics for their theses and research work, so that they may focus on the issues that require further consideration.
4. Highlighting the fact that Islamic jurisprudence is suitable to all generations and places and can make good contributions to solving contemporary problems. It certainly does not hamper progress in any field of life.
5. Highlighting the efforts of Islamic education institutes, universities, *Fiqh* councils and departments of religious ruling (*Ifta'*) in monitoring contemporary issues and giving rulings regarding them.

Features of the Encyclopaedia

One: It is the result of collective effort. This encyclopaedia is the work of a team that includes professors and lecturers from five Saudi universities: Imam Muhammad ibn Saud Islamic University, University of King Saud, University of King Khalid, The Islamic University of Madinah and al-Qaseem University.

Two: The encyclopaedia provides a focus on contemporary *Fiqh* issues. The subject matter of this encyclopaedia is the legal provisions and rulings of detailed actions of Muslim adults. It does not tackle other legal or general issues. It is concerned only with issues of *Fiqh* that relate to the present. However, it may discuss some questions that are not new because they are particularly needed in explaining a contemporary issue or because some of their aspects or forms require reconsideration as a result of new developments.

Three: It is divided according to *Fiqh* topics. The encyclopaedia includes seven parts: worship; monetary transactions; family questions; questions of food, dress and adornments; offences, judgement and international relations; Muslim minorities; and contemporary questions of medicine. Since we are keen that every part will incorporate all relevant issues and remain independent of other parts, some questions may come up in more than one part.

Four: Documentation of information. Because of the nature of the questions tackled, sources of contemporary issues are different from the general sources of *Fiqh* issues. Therefore, recourse has been made to the following sources:

i. *Fiqh* councils and academies: their decisions and research. Most important among these are:
    - The Islamic *Fiqh* Council at the Muslim World League;
    - The International Islamic *Fiqh* Academy of the Organization of Islamic Cooperation (formerly the Organization of the Islamic Conference), Jeddah;
    - Islamic Research Academy in Egypt (*Majma[al-Buhuth al-Islamiyyah)*;
    - Islamic *Fiqh* Academy of India;
    - The Assembly of Muslim Jurists of America.

ii. *Fiqh* committees and academic institutions, including:
    - The Committee of Senior Scholars in Saudi Arabia;
    - The Permanent Committee for Research and Fatwa in Saudi Arabia;
    - Department of Fatwa and Research in Kuwait;
    - Dar al-Ifta in Egypt;
    - The Committee of General Fatwa in Jordan;
    - The European Council for Fatwa and Research.

iii. Authoritative journals, particularly reviewed ones, and journals published by *Fiqh* academies and councils, faculties and research institutes of Islamic studies.

iv. Academic theses in Islamic faculties.

v. Reliable websites.

Five: Brevity. This is a prominent feature of the encyclopaedia, except where details and explanations are required. However, even though it may appear longer than other topics, such details and explanations are kept as short as possible.

Six: Peer review. No less than twenty-one specialized reviewers from Saudi Arabia and other countries have participated in the process of peer review, so as to ensure that each of the seven parts was reviewed by three independent reviewers. The process was carried out in two stages: one when each part was half way through and the second after it was completed. After that the Centre formed a special committee to review the entire work, revising its style and arrangement and adding an index to each part.

Division of the Encyclopaedia

The encyclopaedia is divided into seven parts as follows:

Part I: Contemporary issues in worship;

Part II: Contemporary issues in monetary transactions;

Part III: Contemporary issues in family matters;

Part IV: Contemporary issues of medicine;

Part V: Contemporary issues of Muslim minorities;

Part VI: Contemporary issues of food, dress, adornments and manners;

Part VII: Contemporary issues of offences, judgement and international relations.

Methodology

The methodology followed in the encyclopaedia may be summarized as follows:

1. Collecting contemporary *Fiqh* issues in each of the seven parts from recognized research sources and studying the issues that have been taken as themes of published research papers or considered by *Fiqh* councils and academies.
2. Every issue is arranged as follows:

- The number and title of the issue;
- Similar questions, if any;
- A statement of the issue under discussion;
- The ruling given, including the decisions of *Fiqh* councils;
- Only the most important views expressed on this issue are included together with the most important evidence cited in support, without expressing any preference;
- Sources.

3. The reference for each *hadith* quoted is given within the text.
4. A bibliography is added at the end of each part.
5. A table of contents is added.

The present volume is devoted to tackling contemporary *Fiqh* issues concerned with Muslim minorities. A specialized team has worked on this part consisting of:

- Dr Muhammad ibn Abd al-Lateef Mahmood al-Banna (Senior Researcher)
- Professor Ayyad ibn Nami al-Sulami (Researcher)
- Dr Ahmad ibn Muhammad al-Khudairi (Researcher)

The Centre wishes to thank all researchers, advisors and reviewers who have contributed to this work and prays to God to make it beneficial to people. May He consider our efforts purely dedicated to Him.

The Centre also requests readers to forward their views, comments and suggestions through its email, so as to help improve this work. We assure readers that what they send us will be carefully considered.

Finally, we express our gratitude to God to whom all praise belongs.

The Academic Committee

SECTION 1 : WORSHIP

1. HOLDING FRIDAY PRAYER MORE THAN ONCE IN THE SAME MOSQUE

Similar Questions

- Holding congregational prayers more than once in the same mosque;
- More than one congregation in the same mosque.

The Issue

In non-Muslim countries, people are generally not allowed to leave work in order to attend prayers. As Friday is a working day in such countries, Muslims attend the mosque in their lunch hour. This creates several difficulties: Some may arrive at the mosque only to find that the Friday prayer has finished; the mosque may be too small for the number of worshippers; the mosque may be too far from some places of work; etc. In such situations, more than one congregation of Friday prayer are held in the same mosque. Is this acceptable, particularly when the mosque cannot accommodate all worshippers at the same time?

Ruling

It is the general rule that when the Friday prayer is called, all Muslims should immediately respond and proceed to attend it. God says in the Qur'an: 'Believers! When the call to prayer is made on Friday, go straightaway to the prayer and leave off your trading. This is best for you, if you but knew it. When the prayer is finished, disperse in the land and seek God's bounty. Remember God often so that you may be successful.' (62: 9–10) This means that when he is in a place of residence, Friday prayer is obligatory for every Muslim male to whom worship duties apply. It is a fact that in some situations in non-Muslim countries, it is difficult for all Muslims to attend the Friday prayer at the same time. Hence the question: can it be offered more than once in the same mosque?

Contemporary scholars have given two different views:

The first view, arrived at by the Assembly of Muslim Jurists of America, permits holding more than one Friday prayer congregation in the same mosque, when the place is too small to accommodate all worshippers at the same time. The Assembly's website published on 1 January 2000 an answer to a question about the conditions that permit holding more than one Friday prayer at the same mosque, which stated: 'The proper practice is to hold one Friday prayer in the main mosque of any city. If it is too small to accommodate them, it is perfectly appropriate to hold more than one prayer, as meets the needs and serves the people's interests.'

On 29 June 2008, the same Assembly issued a fatwa (i.e. ruling) in reply to a question about organizing more than one congregation of Friday prayer in the same mosque, which cannot accommodate all worshippers. The fatwa stated: 'There is a pressing need for such an arrangement in many places. Scholars of all schools of Islamic law agree that needs must be taken into account. In light of this we may say that such arrangements are absolutely needed and all schools of Islamic law take such a need into consideration.'

The same Assembly issued a further fatwa on 5 August 2009 on the same question, and the new fatwa stated: 'Since the repeat of Friday prayer is the only solution to accommodate all worshippers, then it is appropriate.' Furthermore, on 17 June 2010, the Assembly stated: 'Friday prayer is permissible to hold in several mosques of the same city when this is needed. In the same light, it may be offered more than once in the same mosque for the same reasons.'

Conditions

The Assembly stated three conditions for this fatwa to be valid. These are:

1. There is no single place of worship that can accommodate all the congregation;
2. The several congregations are not formed according to any type of grouping; and
3. The underlying reason must not be making things too comfortable.

Evidence

The basic evidence in support of this view is: (i) Friday prayer is obligatory and Muslims need to organize it in congregation. Such need is considered to be essential; (ii) the principles upheld by all schools of Islamic law approve the permissibility of measures taken to meet essential needs; and (iii) Analogy with the permissibility of offering the Friday prayer in several mosques of the same town, which is approved by many scholars.

The second view prohibits holding more than one Friday prayer. This view is expressed by several scholars as follows:

The Permanent Committee of Research and Fatwa in Saudi Arabia issued Fatwa No. 21,575, 77/7, on the basis of a question put to it about the permissibility of employees working on sensitive machinery and equipment at their place of work organizing two congregations for Friday prayer. The Committee ruling was as follows:

> There is no harm in the employees dividing themselves in two groups and offering the daily prayers in two congregations at their workplace, because their work conditions require this. However, the Friday prayer may not be held at their workplace. Their duty is to go to the nearest mosque where the Friday prayer is held. Since work requirements necessitate that some of them must stay to operate the equipment, then those who can be spared should go to the mosque where they should offer the Friday prayer with the congregation. When they return to the workplace, they take over from their colleagues who have stayed behind to allow the latter to offer their prayer, but these should offer Zuhr prayer, in four *rak[ahs*.

This fatwa exempts the group who stay behind at the workplace from Friday prayer and requires them to offer Zuhr prayer instead, in four *rak[ahs*.

The late Shaikh Jad al-Haq, the former Rector of al-Azhar,[2] also disallowed holding Friday prayer more than once in the same mosque, despite permitting it in several mosques in the same town.[3]

The late Shaikh Mahmood Shaltoot, the former Rector of al-Azhar, expressed the same view, stating: ‘The call to hold Friday prayer at the same place and day, in two congregations and two sermons is unknown in Islamic history, up to the present. It has no basis in Islamic legislation.’ Commenting on the suggestion that it should be held for women first and a second time for men, or for a section of men first and another section later, Shaikh Shaltoot said: ‘For Friday prayer this has never been approved by Imam Ahmad or anyone else.’[4]

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[2] Al-Azhar in Cairo, Egypt, is the world's oldest Islamic seat of learning and university. Founded in the tenth century, last century it celebrated 1,000 years of continuous Islamic education.

[3] J.A. Jad al-Haq, Al-Fatawa al-Islamiyyah, vol. 4, p. 42.

Evidence

Holding Friday prayer more than once in the same mosque is bound to lead to division within the local community, which is forbidden by Islam.

Sources

- The website of The Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org,
- Fatawa by the Permanent Committee for Research and Fatwa in Saudi Arabia, collated and edited by Ahmad ibn Abd al-Razzaq al-Duwaish.
- Mahmood Shaltoot, *Al-Fatawa*.
- Jad al-Haq Ali Jad al-Haq, *Al-Fatawa al-Islamiyyah*.

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[4] M. Shaltoot, *Al-Fatawa*, pp. 93–5.

2. MULTIPLE CONGREGATIONS IN THE SAME MOSQUE BECAUSE OF LIMITED SPACE

Similar Questions

- More than one congregation for the same obligatory prayer;
- Several congregations in the same mosque.

The Issue

As there is a limited number of mosques in countries where the Muslims are in a minority and building land is very expensive, Muslims often find it necessary to offer their obligatory prayers in several congregations in the same mosque. Is this appropriate?

Ruling

This is a question that has always been given different views of which we will mention two as follows:

The first view is expressed by leading scholars of olden days, including Ibn Mas[ud, Sufyan, Ibn al-Mubarak, Malik, al-Shafi[i. They all ruled that those who do not join the congregation should offer their prayers individually.

Evidence

1. Ibn Mas[ud stated: ‘When we missed the congregation, we offered our prayers individually.’
2. The fear that this may lead to division within the Muslim community. Thus some people may deliberately come to the mosque late so that they can join the congregation led by a scholar whom they prefer. This is bound to generate hurt feelings and division.

This view addresses a different situation, but a number of scholars uphold it on the basis of *qiyas* or analogy. Limited space is treated in the same way as arriving late for any reason.

The second view upholds that it is permissible to hold more than one congregational prayer in the same mosque, when people are late and the first congregation is over, or because of limited space or similar reasons.

Many contemporary scholars subscribe to this view including the Assembly of Muslim Jurists of America. The Assembly expressed this view in a fatwa on whether a group of worshippers who arrived in a mosque after the congregational prayer has finished can form a new congregation and offer the same prayer.

Evidence

1. The Qur'anic verse that says: 'Remain God-fearing as best as you can.' (64: 16).
2. The Prophet says: 'When I tell you to do something, do of it what you can.' (Related by al-Bukhari, *hadith* No. 7,288 and Muslim, *hadith* No. 1,337).
3. Abu Sa[id al-Khudri reports that God's messenger saw a man praying on his own. He said to his companions: 'Would any of you do this man a kindness and join him in his prayer?' A man stood up and joined him. A different version of this *hadith* is: 'A man came in when the Prophet has finished his prayer. The Prophet said to those present: "Who of you will strike a bargain joining this man?" A man stood up and prayed with him.' (Related by al-Tirmidhi *hadith* No. 217) This *hadith* is graded as 'good', and it is also related by al-Hakim who grades it as authentic.

   This *hadith* provides good evidence in support of the permissibility of offering an obligatory prayer in congregation by latecomers. Limited space is a stronger reason for organizing more than one congregation.

Sources

- The website of The Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- Fatawa by the Permanent Committee for Research and Fatwa in Saudi Arabia, collated and edited by Ahmad ibn Abd al-Razzaq al-Duwaish.
- Ibraheem al-Khudairi, 'Ahkam al-Masajid fi al-shari[ah al-Islamiyyah'.
- Ahmad Harisi, '*Ahkam al-ta[addud fi al-[Ibadat*'.

3. RENTING A CHURCH FOR FRIDAY AND EID PRAYERS

Similar Questions

- Prayer in a church;
- Renting a non-Muslim place of worship for prayer.

The Issue

The high prices of built accommodation and building land in Western countries often make it difficult for a local Muslim community to have its own mosque. They may be forced to have a small place for worship, but such a place cannot accommodate the worshippers for Friday and Eid prayers. A church may be available for rent at a reasonable rate. Is it permissible to use it for prayer?

Ruling

It is permissible to rent churches and other places to hold prayers, provided that the following is avoided:

1. Praying where statues are placed. If they happen to be there and in the direction of the *qiblah*, then they should be covered.
2. Praying in a place where there is physical impurity.

This is included in the decision taken by the International Islamic Fiqh Academy's third conference, held in Amman, Jordan from 8–13 Safar 1407 AH, corresponding to 11–16 October 1986. The decision was in reply to questions received from the International Institute of Islamic Thought in Washington. The Academy stated in its ruling that 'it is permissible to rent a church for prayer when necessary. Praying facing statues and pictures should be avoided. These must be covered if they are placed in the direction Muslims face in prayer.'

The Permanent Committee for Research and Fatwa in Saudi Arabia also issued a fatwa, No. 9,118, permitting prayer in a rented church, provided that there is no other place available. The Committee said: ‘If a different place is available for prayer, then praying in a church or temple is not permissible because these are the worship places of unbelievers where beings other than God are worshipped and because they contain statues and shaped pictures. If no other place is available, then the case is one of necessity and prayer in such places becomes permissible.’ [Umar said to the priest: ‘We do not come into your churches because of what is in them of statues and shaped pictures. Ibn [Abbas used to pray in churches except those where there are statues and shaped pictures.’ (Related by al-Bukhari, subheading: prayer in a church)

Sources

- Fatawa by the International Islamic Fiqh Academy at its third conference.
- Fatawa by the Permanent Committee for Research and Fatwa in Saudi Arabia, collated and edited by Ahmad ibn Abd al-Razzaq al-Duwaish.

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4. RENTING A PLACE OF ENTERTAINMENT FOR FRIDAY AND EID PRAYERS

Similar Questions

- Prayer in a bar;
- Prayer in casinos;
- Prayer in a place where wine is sold;
- Prayer in a dance hall.

The Issue

The high prices of built accommodation and building land in Western countries often make it difficult for a local Muslim community to have its own mosque. This compels them to find a place where they can hold their prayers. However, the place may have been previously or subsequently used for purposes which incur God's displeasure. Is holding the Friday or Eid prayer in such a place permissible?

Ruling

Scholars have two different views on this question: The first view permits using such a building on condition that the place is thoroughly cleansed, while the second disallows prayer in areas and halls used for gaming or dancing and advises the community to look for an alternative place or an open area where prayer may be held.

The first view of permissibility is coupled with discouragement. The late Shaikh Jad al-Haq Ali Jad al-Haq, former Rector of al-Azhar, ruled that prayer in dance halls and places where wine is served and wanton conduct is normal is discouraged, but valid, provided that any physical impurity has been removed.

Evidence

1. Necessity relaxes what is prohibited.

2. The *hadith* that quotes the Prophet as saying: ‘The whole earth has been made for me a place of worship and a source of purification.’ (Related by al-Bukhari, *hadith* No. 328) This *hadith* makes a generally applicable statement that may only be restricted by what is confirmed as a condition for the validity of prayer, which is that the place should be free of impurity.
3. A general objective of Islam is that Muslims should get together for the prayers of Eid and Friday. This is fulfilled in such places.
4. We have no clear statement that disallows prayer in such places.

The second view, which prohibits prayer in such places, is given by the Permanent Committee for Research and Fatwa in more detail. The Committee was asked several related questions including the following:

Question: Is it permissible to hold congregational prayer in a hall that is used by thinly-clad persons for dancing and where drinking and gambling are carried out, despite the availability of a mosque in the town?

Answer: Prayer may not be held in a gaming hall when there is one or more mosques in the town. Such a hall is neither a place of worship nor an open area. It is dedicated to gaming, drinking wine and other practices that displease God, and it continues to be used for such purposes. It was not established to please God, but to disobey Him. As such, it is similar to the mosque established by the hypocrites during the Prophet’s lifetime, when God commanded him not to worship there. God said to him: ‘Never set a foot there. Only a house of worship that from the very first day has been founded on piety is worthy of you standing to pray there. In it are men who love to grow in purity, for God loves those who purify themselves.’ (9: 108) Holding prayers there while the hall continues to be used for its normal activities works against the sanctity of prayer and concentrating on it. Worshippers will not feel that they are in a place of worship. To rent such a hall when it is possible to do without it, since worshippers can pray in the local mosques or in the open air, wastes money and helps those who organize such forbidden activities.

Q: Is the cleaning of such places enough to remove their physical and abstract impurities? If prayer is permissible in such places, is the permissibility based on the principle that necessity relaxes prohibition?

A: If the place is cleaned with pure water, so as to remove all traces of impurity, then it is considered purified in the religious sense. If the cleaning is by using a vacuum cleaner, then the impurity remains, except when the impurity is on dust or dry sand and not on hard ground. In this case, cleaning by using a broom or a vacuum cleaner is sufficient for purification. However, the letter putting the question mentions that the worshippers use clean sheets which they place on the floor after using a vacuum cleaner or cleaning the place with a broom. In this case, they are offering their prayer on these clean and purified sheets, not on the floor stained with impurity. When we say that prayer in such places is not permitted, it is because of what has been mentioned earlier about these places, not due to any impurity. As such, the principle you have mentioned does not apply.

Evidence

Prayer may not be held in a gaming hall when there is one or more mosques available because the place is neither a mosque nor an open place.

1. Such places are originally intended to be a public place for drinking and gaming which are prohibited in Islam.
2. Such places are not founded on the principles of obedience to God.
3. They are frequented by non-Muslims who may subscribe to permissiveness.
4. The fact that these places will continue to host the functions for which they have been dedicated makes prayer in them lose its serenity and respectability.
5. Renting such places for prayer helps the people who run them to continue with their wanton and evil activities.

Sources

Jad al-Haq Ali Jad al-Haq, *Al-Fatawa al-Islamiyyah*, vol. 3.

- Fatawa by the Permanent Committee for Research and Fatwa.

5. OFFERING TWO PRAYERS TOGETHER DUE TO STUDY OR WORK REQUIREMENTS OR TIME OVERLAP

Similar Questions

- Combining prayers for a reason;
- Combining prayers for study;
- Combining prayers due to work conditions.

The Issue

Many people work late hours, or are very busy in their work. Sometimes, the time range for prayers is too short with prayers becoming due within a short period. The short time range and work conditions may make it difficult for workers to attend to every prayer on time. On the other hand, the indicators when some prayers should fall due disappear, as happens in certain periods of the year in some areas in the north and the south of the earth. Is it permissible to offer two prayers together for any of these reasons?

Ruling

Contemporary scholars have varying views on this question.

The first view considers it permissible to offer two prayers together because of the short time range or because [Isha prayer becomes due very late at night.

1. The European Council for Fatwa and Research considers it permissible to combine the Maghrib and [Isha prayers because [Isha falls very late at night or because its mark disappears for a period during the summer. Indeed, [Isha may only fall due near midnight. The Council also considers it permissible to combine the Zuhr and [Asr prayers in winter, due to the short hours of the day which makes it difficult for people at work to offer each prayer at its time in their workplaces. However, the Council

makes clear that people should not resort to such combination when there is no need for it, and they must not make it their habit.

2. The General Secretary of the Assembly of Muslim Jurists of America published his view on the Assembly's website making clear that it is permissible to bring the [Asr prayer forward and delay the Maghrib prayer so as it may be offered together with the [Isha prayer, if work conditions require this, until the person concerned can organize his working times differently. However, he emphasized that the normal situation is to offer each prayer at its appropriate time. This concession should be exercised only when there is pressing need, or to remove hardship, or when the time of prayer cannot be properly defined.[5]
3. A number of scholars are of the view that combining two obligatory prayers together occasionally is permissible, and in rare cases essential, in order to remove difficulty and make things easier for people engaged in work that cannot be interrupted, such as traffic police or a surgeon carrying out an operation.
4. The *Fatawa* issued in Tunisia in the fourteenth century AH (1883–1980 CE) considers the different views that outline the reasons permitting combining prayers together and concludes that it is permissible to follow any of the major schools of Islamic *Fiqh*. A special reference is made to the Hanbali school of *Fiqh* which states that 'it is permissible to combine the Zuhr and [Asr prayers together, as well as the Maghrib and [Isha prayers' and offer each two during the time range of either one in different situations, including circumstances and work that permit the non-attendance of Friday prayer, as clearly stated in *Dalil al-Talib* by Marie ibn Yusuf. These scholars add: 'The preferable option is to follow the Hanbali school of *Fiqh*.'[6]
5. Shaikh Muhammad Abu Zahrah is of the view that combining prayers in situations of difficulty is permissible.[7]

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[5] This fatwa is published on the Assembly's website on 24 August 2009. Similar rulings were published on2 January 2007, 25 February 2009, 14 March 2009and 26 June 2009.

[6] *Al-Fatawa al-Tunisiyyah*, vol. 1, Fatwa No. 77.

[7] *Liwa' al-Islam* Magazine, No. 9, 1966, p. 591.

Evidence

1. Removing difficulties at the personal and the community levels.
2. The authentic *hadith* that mentions that the Prophet offered the prayers of Zuhr and [Asr together as well as Maghrib and [Isha together in normal situations that involved no state of fear and no rain. Ibn [Abbas was asked what was the Prophet's purpose in doing so. He said: 'He wanted that his followers should not endure difficulty.'[8]

The second view does not permit combining prayers in such situations.

The Permanent Committee for Research and Fatwa in Saudi Arabia states that it is not permissible to delay a prayer beyond its time range except in situations of maximum difficulty or for legitimate reasons such as travel and rain. Every Muslim must adjust his time so as to offer prayers in their respective time range.[9]

Evidence

1. The Qur'anic verse that says: 'Indeed, prayer is a time-related duty, binding on all believers.' (4: 103)
2. God says in the Qur'an: 'Attend regularly to your prayers, particularly the middle prayer, and stand up before God in devout obedience.' (2: 238)
3. The authentic *hadith* that mentions that the angel Gabriel led the Prophet in prayer twice at home and then told him that the time range for each prayer extends between the two marks shown for each. (Related by al-Tirmidhi, *hadith* No. 138 and Abu Dawud, *hadith* No. 393)

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[8] Related by Muslim, *hadith* No. 705.

[9] The Permanent Committee for Research and Fatwa, vol. 8, pp. 50 and 153. Also Fatwas No. 19,827, vol. 7, p. 41; 18,074, vol. 7, pp. 31–2; 5,741, 18,850, vol. 5, p. 134; 20,654, vol. 7 p. 40; 21,369, vol. 7, p. 39; 19,763, vol. 7, pp. 36–7; 20,619, vol. 7, p.19; 18,095, vol. 5, p. 130; 17,883, vol. 7, p. 32, 11,762, vol. 8, p. 145.

Sources

- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Muhammad ibn Yunus al-Suwaisi al-Tawzari, *Al-Fatawa al-Tunisiyyah fi al-Qarn al-Rabi[[Ashar al-Hijri*, ‘Tunisian Fatwas issued during the fourteenth century AH (1883–1980 CE)’.
- Khalid Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61.
- *Liwa’ al-Islam* Magazine, No. 9, 1966, p. 591.

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6. THE FRIDAY AND EID SERMON IN OTHER LANGUAGES

Similar Questions

- The sermon in a language other than Arabic.

The Issue

In non-Muslim countries many of the ethnic people convert to Islam and attend the Friday and Eid prayers. If the *khutbah*, or sermon, is delivered in Arabic, they will not understand it. Is it permissible to deliver it in the local language?

Ruling

Fatwas by different scholars and institutions agree that this is permissible when needed. Some of these make a condition that at least some people should learn Arabic.

1. The Islamic *Fiqh* Council of the Muslim World League issued its fifth decision in which it states that the validity of the sermons of Friday and Eid prayers is not conditional on the use of Arabic in non-Arabic speaking countries. It is preferable to make the introduction to the sermon in Arabic, as well as quoting the Qur'anic verses in Arabic, so as to get the audience familiar with Arabic sounds and the recitation of the Qur'an. This may make it easier for people in the audience to learn Arabic and recite the Qur'an in its original language. The person delivering the sermon may then make his address in the language of the audience.
2. The Permanent Committee for Research and Fatwa is of the view that it is permissible for whoever is delivering the *khutbah* in countries where the overwhelming majority of the population do not speak Arabic, to give the sermon in Arabic before translating it into the local language so as to enable

the audience to understand. Alternatively he may preferably deliver it first in the local language then translate it into Arabic. Thus he follows the Prophet's guidance, who used Arabic in all his sermons and letters. This also reconciles the different opinions on the question.[10]

3. The European Council for Fatwa and Research is of the view that the normal situation is that the *khutbah* should be in Arabic, but in situations where the audience are largely or totally non-Arabic speaking then there is no harm in giving it in the local language.[11]
4. Shaikh Muhammad ibn Ibraheem, the former Mufti of Saudi Arabia, was of the view that the normal situation is to give the sermon in Arabic. However, if the audience cannot understand it because they do not speak Arabic, then the person delivering it should subsequently explain it in the local language so that the audience could understand.[12]
5. In his Fatwas, Shaikh Muhammad Rasheed Rida rules that there is no harm in translating the sermon into the local language, provided that the gap between the sermon and the prayer is short, no more than it takes to offer two *rak[ahs*. He prefers that the translation should be given after the prayer has finished.[13]
6. Some scholars prefer that the essentials of the *khutbah* should be in Arabic, such as starting with the praise of God and reciting a verse or more of the Qur'an in Arabic, greeting the Prophet, emphasizing the need to remain God-fearing, praying for the welfare of the Muslim community, etc. This is followed by the main sermon in the language of the audience.

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[10] Fatawa by the Permanent Committee for Research and Fatwa, vol. 7, p. 253, Fatwas No. 1,495 and 6,812.

[11] European Council for Fatwa and Research (www.e-cfr.org), fatwa dated 24 August 2009.

[12] Fatwa No. 1,086, issued 27/5/1389 AH, 1969.

[13] M.R. Rida, *Fatawa*, Beirut, vol. 3, pp. 1,093–4.

Alternatively, the sermon may be delivered in Arabic and then translated, either immediately or after the end of the prayer, and either by the speaker himself or another translator.[14]

7. If none of the audience speaks Arabic it is permissible to give the sermon in their local language, while they learn Arabic. If the time needed for learning passes and still none of them has learned Arabic then they are in a state of disobedience and their Friday prayer becomes invalid.[15]

Evidence

1. Prophet Muhammad (peace be upon him), and all other prophets, were sent to their own peoples delivering God's message with each of them addressing his people in their own language. As God says: 'Never have We sent a messenger otherwise than speaking the language of his own people, so that he might make [the truth] clear to them.' (14: 4) God also says: 'The Messenger is not bound to do more than clearly deliver his message.' (24: 54)
2. The purpose of the sermons on Friday and Eid days is to admonish people and remind them of their duties and what benefits them. This can only be done in the language they understand.
3. The Prophet ordered Muslims to learn the languages of other people.
4. The Prophet said: 'Pray as you have seen me pray.' This may be understood as requiring the sermon to be in Arabic and that there could not be a gap between it and the prayer to translate the sermon.

Sources

- Decisions by the Islamic Fiqh Council.
- Fatawa by the Permanent Committee for Research and Fatwa.

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[14] K. Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61, pp. 109–10, 1418 AH, 1997.

[15] Dar al-Ifta, Egypt, *Islamic Fatawa*, vol. 5, p. 1,705.

- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- Muhammad ibn Ibraheem, *Fatawa*.
- Muhammad Rasheed Rida, *Fatawa*, Beirut.
- Khalid Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61, pp. 109–10.
- Dar al-Ifta, Egypt, *Al-Fatawa al-Islamiyyah*, Cairo, 1402 AH, 1981.

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7. PRAYER IN POLAR AREAS

Similar Questions

- Long days in polar areas and their effect on prayers;
- Prayers when times overlap;
- Prayer times in polar areas.

The Issue

In some areas, particularly remote ones, when the night is very short the exact timing for prayer and fasting may be blurred. Questions are often asked about the timing of prayers in these areas throughout the year or at specific periods.

Ruling

The European Council for Research and Fatwa endorses Resolution 6 of the ninth session of the Islamic Fiqh Council held on 121-19 Rajab 1406 AH, which states that this question is open to scholarly discretion, as it is not ruled by a definitive religious statement. The scope of scholarly discretion is wide open. The resolution says:

Certain areas between latitudes 45–48 degrees north and south have clear marks for prayer times throughout the day (24 hours). People living in these areas are required to observe these clear times.

The areas between latitudes 48–66 degrees go through annual periods when the marks for prayer are lost, with the timing for [Isha and Fajr prayers overlapping. In these areas the times for these two prayers should be determined on the basis of analogy with the times of these prayers at the nearest place where prayer times are clearly marked.

The areas beyond latitude 66 degrees should estimate prayer times on the basis of the times at the parallel places at latitude 45 degrees.[16]

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[16] Decisions of the European Council for Research and Fatwa, No. 2/12.

In its session of 14 Rabi[II 1402 AH, corresponding to 4 February 1982, the Islamic *Fiqh* Council adopted a decision based on Decision 61 by the Supreme Committee of Scholars in the Kingdom of Saudi Arabia, dated 12 Rabi[II 1398 AH. The decision states that the times of prayers go through two seasons. The first is when the prayer times are clearly marked during night and day, and the second is when prayer times overlap. In the first season, people should observe the prayer times as defined by the *hadīths* that define these times. In the second season, when the times overlap, the times of [Isha and Fajr prayers and the start of the fasting day should be estimated according to the last period when the two twilights are clearly distinguished.[17]

In its nineteenth session, held on 22–26 Shawwal 1428 AH, the Islamic *Fiqh* Council reiterated its earlier decision that the areas between latitudes 48–66 degrees should estimate their prayer time on the basis of the times during the season when the relevant marks are clearly visible. However, in this new decision, the Council added the following: 'When the prayer time is very late, people who find it hard to wait in order to offer their prayers at the correct time, such as students, employees and labourers on their working days, may combine prayers, offering Maghrib and [Isha prayers together. This may be done on the basis of the religious statements that require the removal of hardship.' The decision cites the texts mentioning combining prayers as evidence in support of combining prayers by students and workers, and during the period when the marks for prayer times are lost.[18]

The late Shaikh Muhammad Rasheed Rida expressed a different view on prayer and fasting in areas where the night and day are too long or too short. He said that people in these areas may estimate the times for prayers on the basis of analogy with what the Prophet (peace be upon him) explained. He mentioned that scholars have different views on whether the estimation should be based on the times in Makkah and Madinah, or in the nearest areas where the marks of prayer times are visible.[19]

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[17] Decisions of the *Fiqh* Assemblly, Decision 3, p. 91 onwards.

[18] See: Papers of the Committee of Senior Scholars in Saudi Arabia, vol. 4, p. 459. Also, The Rulings of the Permanent Committee for Scholarly Research and Fatwa, vol. 6, Fatwa No. 2,769.

The fatwa given by al-Azhar says that the estimation of prayer times in the areas where the days and nights are too long or too short should be based on the times of Makkah and Madinah or the nearest areas with visible marks.[20]

The late Shaikh Mahmood Shaltoot, the Grand Shaikh of al-Azhar, said in his Fatwa: ‘The people in these areas should estimate their days, nights and months according to the times at the nearest areas with reasonable times, i.e. according to the nearest countries where the times are clearly marked and where the night and day accommodate the obligations of fasting and prayer in a way that achieves the benefits of the obligations without placing much hardship on people.’[21]

Evidence

The *hadīth* that speaks of the Impostor, i.e. *al-Dajjal*, includes: ‘We asked: “Messenger of God, how long will he stay on earth?” He said: “Forty days: one day is as long as a year, and one as long as a month, and one as long as a week ...” We asked: “Messenger of God, how about that day which is as long as a year? Will it be sufficient for us to offer the prayers of one day?” He said: “No. Estimate suitable times.”’ (Related by Muslim, *Kitab al-Malahim*, hadith No. 2,137).

Sources

- Decisions by the European Council for Fatwa and Research.

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[19] See: S. al-Munajjid (ed.), *Fatawa al-Shaikh Muhammad Rasheed Rida*, vol. 6, pp. 2,576 onwards. See also, J. A. Jad al-Haq, *Al-Fatawa al-Islamiyyah*, vol. 3, pp. 82 onwards.

[20] See: *Fatawa al-Azhar wa Dar al-Ifta’ fi 100 [Am*, Fatwa No. 1,139, dated 9/3/1402 AH, 3 January 1982, and Fatwa No. 3,316 dated 29/11/1404 AH, 27 August 1984, and Fatwa No.15, in Dhul-Hijjah 1353 AH, March 1935.

[21] M. Shaltoot, *Al-Fatawa*, p. 144 onwards.

- Decisions by the Islamic Fiqh Council, the Muslim World League.
- Research by the Committee of Leading Scholars in Saudi Arabia, Dar al-Qasim, Riyadh, 1421 AH, 2001.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Muhammad Rasheed Rida, *Fatawa*, Beirut.
- Jad al-Haq Ali Jad al-Haq, *Al-Fatawa al-Islamiyyah*, vol. 3, p. 82.
- *Fatawa al-Azhar wa Dar al-Ifta fi 100 [Am*, Fatwa No. 1,139, dated 9 Rabi[I 1402 AH, 3 January 1998.
- Mahmood Shaltoot, *Al-Fatawa*.

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8. FASTING IN POLAR AREAS

Similar Questions

- The long days in polar areas and their effect on people fasting;
- Fasting when there is a time overlap.

The Issue

In some northern and southern areas when there is a time overlap, the beginning and end of the fasting day cannot be determined. Many people ask about fasting in these areas during such periods.

Ruling

The European Council for Research and Fatwa endorses the sixth decision adopted by the Islamic Fiqh Council of the Muslim World League, in the Council's ninth session, 12–19 Rajab 1406 AH (1986), which takes into account that no clear religious text applies to this situation, leaving wide room for scholarly interpretation.

The Permanent Committee for Research and Fatwa says that when the night or the day are too long to enable a person to fast, such a person should fast as long as he can. Should he fear that he might die or fall ill as a result, he may break his fast, eating or drinking what he needs to spare himself harm, then continue the fast till the end of the fasting day. He must also compensate for such days as he cannot fast by fasting a similar number of days at a later date.[22]

Shaikh Muhammad Rasheed Rida considers that people in areas where the days and nights are too long or too short should resort to estimating the times of prayer on the basis of analogy with what the Prophet has taught. He mentions that scholars have different views on whether the estimation should be according to the prayer times in Makkah and Madinah or the times in the nearest cities where the days and nights are of moderate length.[23]

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[22] Fatwa No. 1,442, vol. 10, pp. 114–5.

[23] M.R. Rida, *Fatawa*, vol. 6, pp. 2,576; J.A. Jad al-Haq, *Al-Fatawa al-Islamiyyah*.

Shaikh Muhammad ibn Ibraheem ruled that people in these areas must fast, but they fast according to the times in the cities nearest to them.[24]

The ruling given by al-Azhar is that the times in areas where the days are too long should be estimated on the basis of the times in Makkah and Madinah or in the nearest cities with moderate timings.[25]

In his fatwa on this issue, the late Shaikh Mahmood Shaltoot, the former Rector of al-Azhar, stated: ‘People in those areas should estimate their days, nights and months according to the times of the nearest cities with moderate timings, where the different times are clear and where the days and nights allow the observance of the duties of fasting and prayer, in accordance with the way that enables people to fulfil their duties without much hardship.’[26]

Evidence

The Qur’anic verse that says: ‘Eat and drink until you can see the white streak of dawn against the blackness of the night. Then resume the fast till nightfall.’ (2: 187)

The *hadīth* that speaks of the Impostor, i.e. *al-Dajjal*, includes: ‘We asked: “Messenger of God, how long will he stay on earth?” He said: “Forty days: one day is as long as a year, and one as long as a month, and one as long as a week ...” We asked: “Messenger of God, how about that day which is as long as a year? Will it be sufficient for us to offer the prayers of one day?” He said: “No. Estimate suitable times.”’ (Related by Muslim, *Kitab al-Malahim*, *hadith* No. 2,137)

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[24] M. ibn Ibraheem, *Fatawa*, Fatwas No. 1,909 and 1,097.

[25] See: *Fatawa al-Azhar wa Dar al-Ifta’ fi 100 [Am*, Fatwa No. 1,139 issued on 9/3/1402 AH, 3 January 1998; Fatwa No. 3,316 dated 29/11/1404 AH, 27 August 1984; Fatwa No. 15 issued in Dhul-Hijjah 1353 AH, March 1935.

[26] M. Shaltoot, *Al-Fatawa*, p. 144.

Sources

- Decisions by the European Council for Fatwa and Research.
- Decisions by the Islamic Fiqh Council of the Muslim World League.
- The Papers of the Supreme Committee of Scholars in Saudi Arabia, Dar al-Qasim, 2001.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Muhammad Rasheed Rida, *Fatawa*, vol. 6, p. 2,576.
- Jad al-Haq Ali Jad al-Haq, *Al-Fatawa al-Islamiyyah*, , vol. 3 , p. 82.
- Muhammad Ibn Ibraheem, *Fatawa*.
- *Fatawa al-Azhar wa Dar al-Ifta'fi 100 [Am*, Fatwa No. 1,139 issued on 9 Rabi[I 1402 AH, 3 January 1998.
- Mahmood Shaltoot, *Al-Fatawa*, p. 144.

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9. BUILDING ISLAMIC CENTRES WITH ZAKAT FUNDS

Similar Questions

- Using zakat funds to build Islamic centres.

The Issue

Large amounts of money are needed for the purchase of places that are intended to become Islamic centres. More funds are also needed for building such centres and to meet their running and maintenance costs, so that they can fulfil their objectives. Donations often fall short of what is required, while the need for such centres is great indeed. Is it permissible to use zakat funds for the building of Islamic centres in Western countries?

Ruling

Scholars have different views on this question with two views clearly apparent:

The first view permits the spending of zakat funds in building Islamic centres and other purposes of Islamic advocacy. This view is agreed by:

1. The Islamic Fiqh Council adopted in its eighth session 27 Rabi[II – 8 Jumada I 1405 AH (1985) its fourth decision, and in its ninth session 12–19 Rajab 1406 AH (1986) its fifth and seventh decisions. These decisions state that 'The beneficiaries of zakat include "for serving God's cause" which is very flexible. As such, it is permissible to spend zakat funds for purposes other than those for which they have been stated, such as activities of advocacy of Islam, and for social institutions that advocate and defend Islam and present it to people. Islamic centres are among the best institutions to undertake such tasks.'[27]

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[27] Decisions of the Islamic Fiqh Council, p. 171, 196 and 205.

2. Bayt al-Zakat:[28] The Fatwa Committee of Bayt al-Zakat published its ruling that it is permissible to invest zakat funds in projects that yield profit, such as schools and hospitals, and more importantly, Islamic centres. However, the following conditions apply:
    i. The services of such projects must be available to other beneficiaries of zakat;
    ii. The project must remain to be owned by the beneficiaries of zakat and managed by the ruler or his assignee; and
    iii. If the project is sold or liquidated, the proceeds of the sale or liquidation must be treated as zakat funds.[29]
3. Shaikh Muhammad Rasheed Rida is of the view that 'for serving God's cause', as one of the purposes for which zakat is used, incorporates 'any good action that provides a general service that seeks to earn God's pleasure.'[30]
4. Shaikh Mahmood Shaltoot considers that 'for serving God's cause' includes all public services that may benefit the Muslim community as a whole. It does not apply to any particular one. As such, it includes mosques, hospitals, educational institutions, steel and ammunition factories and similar purposes that benefit the community.[31]
5. Shaikh Jad al-Haq considers that 'for serving God's cause' allows spending zakat funds in all good purposes including burying the dead, building forts and mosques.[32]

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[28] This is an independent institution established by the government of Kuwait.

[29] Papers and proceedings of the third seminar on Contemporary Issues of Zakat held in Kuwait on 8/9/1413 AH 2 March 1992; pp. 323–4.

[30] M.R. Rida, *Fatawa*, pp. 1,238 and 1,915.

[31] M. Shaltoot, *Al-Fatawa*, p. 128.

[32] J.A. Jad al-Haq, *Al-Fatawa al-Islamiyyah*, p. 105.

Evidence

1. The Qur'anic verse: 'Charitable donations are only for the poor and the needy, and those who work in the administration of such donations, and those whose hearts are to be won over, for the freeing of people in bondage and debtors, and to further God's cause, and for the traveller in need.' (9: 60)
2. God says in the Qur'an: 'Those who spend their property for the cause of God and do not follow their spending by vaunting their own generosity, or by hurting others, shall have their reward with their Lord. They have nothing to fear, nor shall they grieve.' (2: 262) The phrase 'for the cause of God' applies to everything that serves the truth and makes it clear.
3. It is reported that one of the Prophet's companions dedicated a she-camel for the service of God's cause. The man's wife wanted to travel to Makkah to perform the pilgrimage. The Prophet said to her: 'You may use the she-camel, as performing the pilgrimage is part of God's cause.' (Related by Abu Dawud, *hadith* No. 1,990)
4. The role of Islamic centres in the advocacy of Islam confirms that they may be included in the general meaning of the verse identifying the ways of spending zakat funds.

The second view does not approve of using zakat funds for the building of Islamic centres. This view is shared by:

1. The Supreme Committee of Scholars in Saudi Arabia adopted Decision No. 24 on 21 Sha[ban 1394 AH (1974). It says that after reviewing the relevant research works and views on this issue, it adopted a majority decision reconfirming that 'to further God's cause' refers to volunteer fighters and their needs of equipment and preparation. If there are none of these, then the funds should go to the other beneficiaries of zakat. No such funds may be spent on providing or maintaining public services unless there are no poor or needy people and no other beneficiaries of zakat as outlined in the relevant Qur'anic verse.[33]

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[33] Papers of the Committee of Senior Scholars in Saudi Arabia, vol. 1, p. 98.

2. The majority of the members of the Islamic Fiqh Council in India are of the view that as one of the areas that may benefit of zakat funds, ‘to further God’s cause’ is specific, not general. As such, it cannot include all religious and advocacy purposes.[34]
3. The former Mufti of Saudi Arabia, Shaikh Muhammad ibn Ibraheem considers that ‘to further God’s cause’ cannot apply to mosques and charitable purposes. He adds: ‘Paying zakat to spend on mosques and charitable purposes cannot be included into the eight classes mentioned by God as the only ones to be given zakat money.’[35]

Evidence

The overwhelming majority of early scholars consider that “to further God’s cause” is limited to volunteer fighters and to get ready for fighting, because the relevant religious texts use it in this sense.

Sources

- Decisions by the Islamic Fiqh Council of the Muslim World League.
- The papers of the Supreme Committee of Scholars in Saudi Arabia, Dar al-Qasim, 2001.
- The papers and proceeds of the third seminar on Contemporary Issues of Zakat held in Kuwait on 8 Ramadan 1413 AH, 2 March 1992.
- Decisions by the Islamic Fiqh Council of India.
- Muhammad Rasheed Rida, *Fatawa*, Beirut.
- Muhammad ibn Ibraheem, *Fatawa*.
- Muhammad ibn Yunus al-Suwaisi al-Tawzari, *Al-Fatawa al-Tunisiyyah fi al-Qarn al-Rabi[[Ashar al-Hijri*, ‘Tunisian Fatwas issued during the fourteenth century AH (1883–1980 CE)’.
- Mahmood Shaltoot, *Al-Fatawa*.
- Jad al-Haq Ali Jad al-Haq, *Al-Fatawa al-Islamiyyah*.

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[34] Islamic Fiqh Council in India, Decision 28 (12/5).

[35] M. Ibn Ibraheem, *Fatawa*, Fatwa No. 985, dated 1/7/1380 AH (1961).

10. SETTING OFF TAXES AGAINST ZAKAT

Similar Questions

- Allocating zakat liability to pay one’s taxes.

The Issue

In many non-Muslim countries where Muslims are in a minority, Muslims pay heavy taxes. Are they allowed to deduct what they pay in taxes from their zakat liability?

Ruling

Zakat is a religious duty and one of the pillars on which the structure of Islam is built. It is liable to be paid on monies and cattle when they have been owned for a lunar year provided that they are in excess of a certain threshold defined by scholars. The liability also applies to plants when they are harvested and on minerals and other types of property. The zakat revenue is spent to meet the needs of eight classes of beneficiaries, mentioned in the Qur’anic verse that says: ‘Charitable donations are only for the poor and the needy, and those who work in the administration of such donations, and those whose hearts are to be won over, for the freeing of people in bondage and debtors, and to further God’s cause, and for the traveller in need. This is a duty ordained by God, and God is All-knowing, Wise.’ (9: 60)

Taxes may be legitimately imposed by the ruler so as to raise funds to conduct the affairs of the state. Scholars have considered whether they may be paid out of one’s zakat liability and came to the conclusion that they may not. However, one may deduct one’s taxes out of his money that is liable to zakat.

This view is generally shared by contemporary scholars:

1. The Permanent Committee for Research and Fatwa considers that when a government requires its people to pay taxes, zakat is not waived for those who have more than its threshold and owned it for a year. They must pay out their zakat and give it to its rightful beneficiaries.[36]
2. Shaikh Muhammad Rasheed Rida says that whatever taxes people pay does not count towards their zakat and they cannot be exempt from paying it.[37]
3. The fourth seminar on contemporary issues of zakat held in Bahrain 17–19 Dhul-Qa[dah 1414 AH, 29–31 March 1994 stated: 'The payment of taxes imposed by government does not exempt anyone from paying zakat. The two are totally different as to who require them and the purposes for which they are paid.'
4. The Tunisian Fatawa, vol. 2, stated under No. 183 that 'taxes cannot be considered in lieu of zakat'; No. 184: 'taxes cannot replace zakat'; and No. 185 clarifies that zakat is totally different from taxes in their conditions and the purposes for which they are paid. In general the Tunisian Fatawa make clear that there are more claims on money than zakat, and these claims cannot compensate for zakat.[38]
5. The late Shaikh Mahmood Shaltoot, former Rector of al-Azhar, considers that there is a fundamental difference between tax and zakat, and that what is paid in tax may not be counted towards one's zakat liability. He adds: 'Zakat is legislated by God and a duty stipulated by faith. It must be paid out whether it is needed or not, serving as a permanent resource for the poor and the needy who exist in every community. Tax, on the other hand, is imposed by the ruler when needed. As such, the

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[36] The Permanent Committee for Research and Fatwa, Fatwa No. 7,551, vol. 9, p. 423 and vol. 9, p. 339.

[37] M.R. Rida, *Fatawa*, vol. 1, p. 229 and vol. 6, p. 2,589.

[38] M. ibn Yunus al-Suwaisi al-Tawzari, *Al-Fatawa al-Tunisiyyah*, vol. 2.

two are totally different in their sources, purposes, amounts and continuity.'[39]

Sources

- Muhammad Rasheed Rida, *Fatawa*, Beirut.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Muhammad ibn Yunus al-Suwaisi al-Tawzari, *Al-Fatawa al-Tunisiyyah fi al-Qarn al-Rabi[[Ashar al-Hijri*, 'Tunisian Fatwas issued during the fourteenth century AH (1883–1980 CE)'.
- Mahmood Shaltoot, *Al-Fatawa*.

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[39] M. Shaltoot, *Al-Fatawa*, p. 125.

11. OFFERING CONDOLENCES TO NON-MUSLIMS

Similar Questions

- Supplication for the family of a non-Muslim deceased person.

The Issue

A Muslim minority lives among non-Muslim and they normally socialize with them. They need to offer condolences when, say, a neighbour loses a family member. Is this permissible?

Ruling

Scholars of olden days expressed different views on offering condolences to non-Muslims in the Muslim state. Some of them approved it, advising that when offering such condolences a Muslim may say to the non-Muslim: ‘May God compensate you and may your numbers suffer no decrease.’ If the non-Muslim suffers the death of his Muslim relative, a Muslim’s condolences to him may be something like: ‘May God compensate you well and may He grant forgiveness to your deceased relative.’[40]

Imam Ahmad did not express a clear view on offering condolences to non-Muslims. Two views are expressed on the matter, based on whether to visit them when they are sick. The first is that offering condolences is appropriate because they may be visited during sickness. It is authentically reported that the Prophet visited a young Jewish man in his illness. He sat close to his head and told him to accept Islam. The young man looked at his father, but the father told him to do as the Prophet bid him. The lad did so and accepted Islam. The Prophet was well pleased and said when he left: ‘All praise is due to God who saved him from the fire through me.’ (Related by al-Bukhari, *hadith* No. 1,356) The other view is that a Muslim should not visit a non-Muslim in sickness, nor express condolences when a non-Muslim family suffers the death of a member. This is based on the *hadith* that quotes the Prophet as saying: ‘Do not be the first to greet the Jews and Christians.’ (Related by Muslim, *hadith* No. 2,167)

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[40] Ibn Qudamah, *Al-Sharh al-Kabir*, vol. 2, p. 428.

It appears that offering condolences is a supplication for the person suffering a loss through death. However, if a Muslim prays for a non-Muslim to have guidance, wealth, children, and to be spared tragedy, this is perfectly appropriate.

Permissibility: In modern times, Muslims constitute minority communities in many non-Muslim countries. If they do not offer condolences to their neighbours when they suffer death in the family this may be interpreted as hostility, or at least unfriendliness, which may put Muslims in a position of serious disadvantage. Furthermore, it is an international tradition that leaders of a country express sympathy and condolences when another country suffers a natural disaster, or the death of the head of state, etc. Contemporary scholars say that it is appropriate for a Muslim to condole a non-Muslim, within certain limitations, as follows:

1. In its fatwas, the Permanent Committee for Research and Fatwa says that ‘if the condolences are intended to encourage people to be more inclined to Islam, it is appropriate. This is encouraged by Islam.’ The Committee also says: ‘It is proper to offer condolences, but without praying for the forgiveness of the deceased.’[41]
2. The Jordanian Department of Fatwa says: ‘It is permissible to offer condolences to a non-Muslim when suffering the loss of a relative, but these condolences should be expressed in words that are not contrary to Islamic beliefs.’[42]
3. The European Council for Fatwa and Research sees no objection to offering condolences and attending funerals when

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[41] Fatwa No. 19,584, vol. 7, p. 411; Fatwa No. 16,426, vol. 26, p. 92.

[42] Fatwa No. 181, dated 16 March 2009 and fatwa No. 763m dated 8 June 2010.

the deceased is a relative. To do so will strengthen relations and maintain ties, while deliberate absence on such occasions leads to estrangement.[43]

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Fatawa by the Jordanian Department of Fatwa.
- Decisions of the European Council for Fatwa and Research.
- Khalid Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61.
- Ibn Qudamah, *Al-Sharh al-Kabir*.

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[43] European Council for Fatwa and Research (www.e-cfr.org), fatwa dated 27 August 2009.

12. BURIAL OF MUSLIMS IN NON-MUSLIM GRAVEYARDS

Similar Questions

- Burial in other people's graveyards;
- Burial in the graveyards of Christians and Jews.

The Issue

There are religious rulings that apply to a deceased Muslim, such as bathing, wrapping, burial and facing in the direction of prayer, etc. There are graveyards for Muslims, and others for Jews and Christians. In most cases in non-Muslim countries with minority Muslim communities there are no graveyards for Muslims. Is it permissible to bury a deceased Muslim in non-Muslim graveyards?

Ruling

Contemporary scholars have three different views on this question:

The first view permits burying Muslims in non-Muslim graveyards as a matter of necessity. This is the view of the Islamic Fiqh Academy and the European Council for Fatwa and Research. The relevant decision of the Academy states that Muslims should collaborate and endeavour to have their own graveyards. If they cannot manage this, then they should at least have their own section at the side of a graveyard where they can bury their own deceased. If they cannot achieve this, they may bury their dead wherever they can, even if this means burial in non-Muslim graveyards.[44]

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[44] This decision was adopted by the International Islamic Fiqh Academy in its third conference held in Amman, Jordan, 8–13/2/1407 AH, 11–16 October 1986. The decision, No. 23, 11:3 was adopted in answer to the questions raised by the International Institute of Islamic Thought.

Evidence

1. What benefits a Muslim after death is his good deeds, not the place where he or she is buried. God says: ‘Man will only have what he strives for.’ (53: 39)
2. What sanctifies a person is his deeds, not the land. Salman al-Farisi said: ‘The earth does not sanctify anyone, but it is a person’s deeds that may sanctify him.’ (Related by Malik in *Al-Muwatta’*, *hadith* No. 2,232)
3. Necessity, if the Muslim community cannot have its own graveyard or a section in other people’s graveyards.
4. The normal requirement is to ensure burial takes place soon after death and that a Muslim is buried in the town where he dies.
5. Prayer for the deceased is granted to him wherever he is buried.

The second view prohibits burying a Muslim in non-Muslim graveyards. This is the view of the Permanent Committee for Research and Fatwa in Saudi Arabia. It is expressed in several places:

1. Fatwa No. 1,841, vol. 8, pp. 453–4 states: ‘It is not permissible for Muslims to bury a deceased Muslim in a graveyard belonging to non-Muslims.’
2. Fatwa No. 9,024, vol. 8, pp. 353–4 states: ‘It is not permissible to bury a Muslim in the graveyards of Christians or other communities, such as Jews, Communists or idolaters.’
3. On the website of the General Presidency for Research and Fatwa, the rulings of the Permanent Committee state: ‘A deceased Muslim may not be buried within the fenced area of a non-Muslim graveyard, and not even in a section of it allocated to Muslims, because all the area within the fence is part of the graveyard.’
4. Fatwa 3,081 states: ‘It is not permissible to bury a Muslim in Christian graveyards because he is troubled by their suffering. Graves of Muslims must be in a place that is separate from Christian graveyards.’

5. If a Muslim community cannot have its own graveyard, then when a Muslim dies he must not be buried in non-Muslim graveyard. A place in the desert may be dug to bury him there, and then the area should be levelled with the ground so that no one could dig up the grave. If it is possible to remove the body to a country where there are graveyards for Muslims, without excessive cost, then this is preferable.[45]

6. Burial in non-Muslim graveyards is not permissible. If a Muslim is buried there, his body should be dug up and removed to Muslim graveyards if there are any, or else it should be buried in a place where there are no graves of unbelievers, however possible.[46]

Evidence

1. The standard practice during the Prophet's lifetime and in the generations of the Prophet's companions and their successors.
2. The Muslims are troubled by the unbelievers.

The third view provides details as follows:

1. A deceased Muslim should be buried in Muslim graveyards in Western countries.
2. If a Muslim community does not have its own graveyard, the deceased must be removed to a Muslim country, if i) this is financially possible; ii) the country's authorities allow this; and iii) it can be done without affecting the body.
3. If neither of the above is possible, the deceased may be buried in a non-Muslim graveyard, in a section dedicated for Muslims.
4. If even this last option is not possible, it is permissible to bury the deceased in a non-Muslim graveyard, as a matter of necessity.

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[45] Fatwa No. 5,377, vol. 8, p. 455; and fatwa No. 10,508, vol. 9, p. 7.

[46] Fatwa No. 16,057, vol. 7, p. 392.

5. If burial in a non-Muslim graveyard is the only option, priority is given to Christian graveyards, then Jewish ones, then others.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- The website of the European Council for Fatwa and Research: www.e-rfc.org.
- Fatawa by the International Islamic Fiqh Academy at its third conference.
- Khalid Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61.

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13. BURYING A MUSLIM IN A COFFIN

Similar Questions

- Burial according to the Christian way.

The Issue

Muslim minorities live in societies with a non-Muslim majority, and these communities have their own rituals about burying their dead, for example putting the body in a coffin. Perhaps this is due to the nature of the land in these areas, but is it permissible that a Muslim should be buried in a coffin, as non-Muslims are?

Ruling

This is a question on which scholars have different views, with some discouraging it and others permitting it. What is new is that the need continues to be on the increase in countries with minority Muslim communities.

The first view discourages it.

1. Ibn Qudamah said: 'Burying a deceased person in a coffin is reprehensible because it has not been reported that the Prophet or any of his companions did that. Moreover, it adopts the ways of other people. The solid earth is better for the remains of the body.'[47]
2. In its Fatwa section, IslamWeb says: 'The normal verdict is that it is discouraged unless the land is soft, when it becomes permissible. Burial in a coffin is reprehensible. Al-Khatib al-Shirbini said: "It is unanimously agreed that burial in a coffin is reprehensible, because it is deviation from the proper practice, unless the land is soft. In this case, it is not

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[47] Ibn Qudamah, *Al-Mughni*, vol. 2, p. 503.

> reprehensible. The deceased's will to be buried in a coffin, if any, should not be carried out except in this case."'

The second view permits it.

The Palestinian Department of Fatwa says: 'Burial in a coffin is permissible when needed, as in the case of soft land or when a person dies while travelling by sea and the ship is far from dry land. The body may start to be affected if left unburied. In this case, the body is placed in a coffin which is then thrown in the sea. The same applies if the deceased had suffered burns or disfigurement which necessitates that the body could only remain intact in a coffin.'

Sources

- Al-Khatib al-Shirbini, *Mughni al-Muhtaj*, vol. 1, p. 361.
- Ibn Qudamah, *Al-Mughni*, vol. 2, p. 503.
- Home page for IslamWeb.net website: www.islamweb.net
- The website of the Egyptian Department of Fatwa: www.darifta.org
- The website of Ibn Taymiyyah: www.ebntaymiah.midad.com

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SECTION 2 : ANIMAL SLAUGHTER

14. ANIMALS SLAUGHTERED BY PEOPLE OF EARLIER REVELATIONS

Similar Questions

- Animals and poultry slaughtered by people of earlier revelations;
- The food of people of earlier revelations.

The Issue

Can a Muslim eat of the meat of animals slaughtered by non-Muslims who belong to earlier divine religions in countries where the Muslim community is in a minority, especially when these are offered in shops and restaurants?

Ruling

We need to go into the details of this question.

Contemporary scholars differ on what is the standard ruling on this question. Some of them are of the view that the standard ruling is permissibility, citing as evidence the Qur'anic verse that says: 'The food of those who were given revelations is lawful to you, and your food is lawful to them.' (5: 5) This means that Muslims who visit or are resident in non-Muslim countries may eat the meat of animals slaughtered by people of earlier revelation, if such animals are lawful to eat. However, they need to make sure that nothing is added to them which is forbidden in Islam. In addition, if one is sure that the animal has not been properly slaughtered then the permissibility is cancelled.

Some contemporary scholars are of the view that the standard ruling on the eating of animals slaughtered by people of earlier revelation in the present time is not permissible for three reasons:

1. Peoples of other religions, like Buddhists, Sikhs and polytheists may be living among them.
2. The normal practice in their slaughterhouses is unlike the proper Islamic method. The Qur'anic verse relates to what the followers of earlier religions used to do during the Prophet's lifetime, when they slaughtered their animals in the same way as Muslims.
3. The right thing is to take a cautious attitude so that we do not eat meat unless we know that it is properly slaughtered.

The late Shaikh Abd al-Azeez ibn Baz said that scholars of the first view may reply that God knew perfectly well what will happen in the future, yet He stated a general rule: 'The food of those who were given revelations is lawful for you.'

In his collected Fatwas, Shaikh Ibn Baz said: 'I have been informed by many residents there that most slaughterhouses in America and Europe do not follow the Islamic way of slaughter. Therefore, if a Muslim takes the precaution of not eating of such meat, that is preferable. It is important that a believer should take a cautious approach with matters related to food and drink. If he can buy a sheep or chicken and slaughter it by himself or if he buys it from butchers that are known to sell only properly slaughtered meat, this is much better.'

Scholars who subscribe to the second view may also say that these people are not followers of earlier revelations. They do not show respect for their faith or keenness to follow its teachings.

If such meat is sold in an area populated by people of earlier divine religions only, i.e. Jews and Christians, their meat is permissible to eat even though the method of their slaughter is unknown. If other unbelievers live in the same area such meat should not be eaten, because what is permissible is mixed with what is not permissible, unless we know that the slaughter is carried out in the appropriate method.

If it is known that the method of slaughter is unacceptable from the Islamic point of view, as in the case of strangulation or electric shock, then the meat is not permissible to eat, even if the slaughterer is a Muslim.

This is the view of the Permanent Committee for Research and Fatwa, the International Islamic *Fiqh* Academy and the European Council for Fatwa and Research, as expressed in its third session. It is also the view of Shaikh Abd al-Azeez ibn Baz and Shaikh Muhammad ibn Uthaymeen.[48]

Animals killed by electric shock

All institutions and councils are almost unanimous that the meat of animals known to have been killed by electric shock is unlawful to eat, because then they are carrion. To carry out slaughter on such animals after they have died is meaningless. The decision by the European Council for Fatwa and Research states: 'Having reviewed the different methods of slaughter and identified the different unacceptable details such methods involve, leading to a large number of such animals, particularly chickens, dying, the Council rules that it is unlawful to eat the meat of poultry and bovine animals. This does not apply to lamb and veal because their method of slaughter in some countries is not unacceptable. The Council recommends the Muslim community in Western countries to establish their own slaughterhouses so that they can be reassured and preserve their own religious and cultural identity. The Council calls on Western countries to acknowledge the religious requirements of Muslims and enable them to slaughter their animals in accordance with the Islamic faith, as they do with other religious communities such as the Jews. The Council recommends Muslim countries to import only permissible meat which is slaughtered under supervision of reliable Muslim centres in Western countries.'

Stunning before slaughter

The decision by the International Islamic *Fiqh* Academy includes:

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[48] Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, pp. 387–397, 411, 412 and 418; The International Islamic Fiqh Council, Decision 23 (11/3) and 24 (3/10); the European Council for Fatwa and Research; Ibn Baz, *Fatawa*, vol. 23, pp. 10–21 and 83; Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, pp. 97 and 99.

‘The normal Islamic method of slaughter involves no stunning of the animal, because the Islamic method, under proper conditions, is the most compassionate to animals, causing least pain and suffering. Those who undertake the actual slaughter are advised to develop their methods of slaughtering large animals so as to meet this condition of the best way of slaughter. [...] Muslims living in non-Muslim countries should use legal methods to gain permission to slaughter their animals according to the Islamic method, without stunning.[49]

Mentioning God’s name once for a group of animals

The decision by the International Islamic *Fiqh* Academy concludes that the normal way to slaughter poultry and other animals is manually by the butcher. There is no harm in using machines provided the Islamic conditions are met. Mentioning God’s name once for every group of animals that are slaughtered in succession is sufficient, but if there is disruption, the name of God must be mentioned again.

Evidence

God has permitted eating the food of the people of earlier divine religions, as He says: ‘The food of those who were given revelations is lawful to you, and your food is lawful to them.’ (5: 5) Therefore, such food may be eaten by Muslims, unless we have a reason that makes it unlawful for us to eat.

Scholars are unanimous that the food of earlier divine religions is lawful for Muslims to eat.

It is forbidden to eat the meat of any animal that has been strangled, beaten to death or died in any similar way, or when the name of anyone other than God has been mentioned when it is slaughtered, as God says: ‘Forbidden to you are carrion, blood, the flesh of swine; and that over which any name other than God’s has been invoked;

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[49] International Islamic Fiqh Council, Decision 94, 3/10.

and the animal that has been strangled, or beaten to death, or killed by a fall, or gored to death, or savaged by a beast of prey, except that which you may have slaughtered when it is still alive.’ (5: 3)

Where there is doubt, then the meat should not be eaten, as the Prophet says: ‘Leave that which makes you doubt for that which does not make you doubt.’ He also says: ‘He who avoids doubtful matters clears himself in regard to his religion and his honour.’

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Decisions of the European Council for Fatwa and Research.
- Decisions by the Islamic Fiqh Council of the Muslim World League.
- Fatawa for Muslim minorities by a group of scholars.
- The Collected Fatwas by Shaikh Abd al-Azeez ibn Baz.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Min Fiqh al-Aqaliyyat*, Kitab al-Ummah, No. 61.

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15. ANIMALS SLAUGHTERED BY UNBELIEVERS

Similar Questions

- Animals slaughtered by atheists, idolaters and Zoroastrians;
- The food of unbelievers other than people of divine religions.

The Issue

Muslims may live in non-Muslim countries where the local population are unbelievers who do not follow any divine religion, as in the case of idolaters, atheists, Zoroastrians, etc. Can they eat of the meat of animals slaughtered by such unbelievers?

Ruling

A Muslim may not partake of the meat of animals slaughtered by unbelievers other than the followers of earlier divine religions. This applies to Zoroastrians, idolaters, atheists and the like. Nor is it permissible to eat of their food that is mixed with such meat, including the sauce. The only exception is the case of absolute necessity that permits eating carrion.

This ruling is issued by the Permanent Committee for Research and Fatwa in Saudi Arabia, and it is endorsed by Shaikh Abd al-Azeez ibn Baz.[50]

Evidence

God has only permitted us to eat the food of the followers of earlier divine religions, as He says: ‘The food of those who were given revelations is lawful to you, and your food is lawful to them.’ (5: 5)

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[50] Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, pp. 411, 412, 418–20. Ibn Baz, *Fatawa*, vol. 23, pp. 33–4.

According to Ibn [Abbas and others, the food the verse refers to is their slaughtered animals. Other unbelievers are not included in this permission, which means that their food is forbidden to eat.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- The Collected Fatwas by Shaikh Abd al-Azeez ibn Baz.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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16. ENQUIRING ABOUT THE METHOD OF SLAUGHTER AND OTHER DOUBTFUL FOODS

Similar Questions

- Verification of the method of slaughter;
- How to ascertain proper slaughter.

The Issue

Are Muslims who live in non-Muslim countries required to enquire about the method of slaughtering animals that are normally permissible to eat when such meat is offered in restaurants and shops? Are they required to enquire about the ingredients of canned or packaged food and whether they include any forbidden ingredients? Is such enquiry obligatory when there is a possibility that they may contain some animal-based ingredients?

Ruling

Scholars have two different views on this point:

The first view considers it permissible to eat of the meat and food of people of divine religions without enquiring how they slaughter their animals. Such meat does not become forbidden unless one is certain or considers it most likely that they involve what is forbidden. This is the view of the Permanent Committee for Research and Fatwa and Shaikh Muhammad ibn Uthaymeen.

The most important evidence in support of this view is the authentic *hadith* reported by [A'ishah: 'A group of people asked the Prophet: "Messenger of God, some people bring us meat and we do not know whether God's name was mentioned at the time of its slaughter or not." He said to them: "You mention God's name and eat it." They had accepted Islam only recently.' (Related by al-Bukhari, *hadith* No. 2,057)

The general rule is that the normal verdict on all matters is that they are permissible until we have clear evidence for prohibition.

The second view is expressed by the late Shaikh Abdullah ibn Jibreen who maintained that one should refrain from eating doubtful meat or food. If one needs to eat of these, one must first enquire about their ingredients and ensure that they are all lawful.

Evidence

The evidence in support of this view is that what is doubtful should be ascertained, as the Prophet says: 'He who avoids doubtful matters clears himself in regard to his religion and his honour, but he who falls into doubtful matters falls into that which is unlawful.' (Related by al-Bukhari, *hadith* No. 52; Muslim, *hadith* No. 1,599) This means that a Muslim should make the necessary enquiries until he is clear in regard to his religion and ensures to avoid what is doubtful.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Abdullah Ibn Jibreen, *Al-Lu'lu' al-Makin min Fatawa Shaikh Ibn Jibreen*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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17. NON-MUSLIMS WHOSE FOOD IS PERMISSIBLE TO EAT

Similar Questions

- Followers of divine religions whose meat is permissible;
- The distortion of the faiths of Jews and Christians.

The Issue

How to define the people of earlier divine religions whose food, especially meat, is permissible to eat and whose women are permissible to marry? Does the fact they have deviated from the true Christian faith on many questions affect the ruling?

Ruling

People are considered to be followers of earlier divine religions when they are Christians or Jews and affiliate themselves to such communities. This is not affected by the distortion that has crept into their faiths, unless such distortion is tantamount to total atheism. In this particular case they are no longer classified as belonging to earlier divine religions, but as idolaters and atheists, and any meat they have prepared for meals is unlawful to eat.

This is the view of the late Shaikh Muhammad ibn Uthaymeen and of the General Secretary of the Assembly of Muslim Jurists of America. It is also stated in *Fatawa al-Aqaliyyat al-Muslimah* and endorsed by the Permanent Committee for Research and Fatwa.[51]

Evidence

The distortion of the beliefs of people of earlier revelations predates the time of the Prophet. God mentions many aspects of such distortion, such as the belief in the Trinity, the claim that He has a son, the deliberate distortion of His words, etc. Nevertheless He has permitted us to eat of their meat. He says: ‘Unbelievers indeed are those who say: “God is the Christ, son of Mary.” The Christ himself said: “Children of Israel, worship God, my Lord and your Lord. Whoever associates partners with God, God shall forbid him entrance into Paradise and his abode will be the Fire. Wrongdoers will have no helpers.” Unbelievers indeed are those who say: “God is the third of a trinity.” Of certain, there is no god save the One God. Unless they desist from so saying, grievous suffering will surely befall those of them who are unbelievers.’ (5: 72–73) Yet God says in the same surah: ‘The food of those who were given revelations is lawful to you, and your food is lawful to them.’ (5: 5)

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[51] *Fatawa al-Aqaliyyat al-Muslimah* pp. 95 and 97; Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, pp. 391–5 and 404–7.

The Prophet is reported to have said: ‘The animals slaughtered by Arab Christians are lawful to eat. If you hear the slaughterer mention the name of someone other than God, then refrain from eating it. If you hear nothing of the sort, then God has permitted eating it and He knows their disbelief.’ (Related by al-Bukhari, *hadith* Nos 7 and 92)

Sources

- *Fatawa al-Aqaliyyat al-Muslimah* by a group of scholars.
- Fatawa by the Permanent Committee for Research and Fatwa.

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SECTION 3: FOOD AND DRINK

18. MEDICINES CONTAINING ALCOHOL

Similar Questions

- Using alcohol in medicines;
- Medicines with an alcohol ingredient.

The Issue

There are many medicines that contain alcohol in varying proportions. Most of these are for the treatment of colds, coughs, upper respiratory infections as well as other common diseases. Should Muslims take such medicines if alcohol-free medication is hard to come by?

Ruling

It is permissible to use medicines with an alcohol ingredient if the alcohol is transformed and has no effect on the mind. If the medicine contains a large percentage of alcohol, or a small percentage that remains potent, then it may not be used except in the case of need, when there is no permissible alternative and it is prescribed by a qualified doctor of integrity. In this latter case, a Muslim may take such a medicine within the limits of what is essential.

The Islamic *Fiqh* Council of the Muslim World League endorsed this view in its decision No. 6/16 which stated:

- It is permissible to use medicines containing alcohol in small quantities that are essential in the pharmacological industry, provided that such medicines are prescribed by a competent doctor. It is also permissible to use alcohol externally on wounds as a cleansing agent, killer of germs and in creams and ointments that are used externally.

- The Islamic *Fiqh* Council urges pharmaceutical companies and pharmacists in Muslim countries and importers of medicines to do their best to reduce the use of alcohol in medicines to the absolute minimum, and to use substitutes wherever possible.
- The Council urges doctors to keep prescribing alcohol-containing medicines to the minimum.

This view is also endorsed by the International Islamic *Fiqh* Academy in its decision No. 23 (11/3) and by the Permanent Committee for Research and Fatwa.[52]

Evidence

If the alcohol component is mixed within the medicine and cannot be separated then the rule of transformation applies to it. This rule means that the matter that is impure or forbidden is no longer effective and has shed its impurity and become lawful to consume. Scholars give various examples, such as a drop of urine that falls into a small quantity of water and gets mixed with it leaving no effect on the water which retains its colour, taste and smell. This water is considered pure and may be used as such. Another example is that of a dog falling into a salt-extracting facility and becoming part of the salt product. This salt can be used in food, it is treated as salt and we do not consider its origin.

If the alcohol is not mixed then the medicine is not permissible to use because it is partly intoxicating. However, in cases of necessity when there is no substitute medicine, the alcohol-containing one becomes permissible, because necessity relaxes prohibition and Islamic law is based on removing hardship and stress. Necessity is treated according to the situation.

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[52] Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, p. 297.

Sources

- Decisions by the Islamic *Fiqh* Council of the Muslim World League.
- Decisions by the International Islamic *Fiqh* Academy.
- Decisions of the European Council for Fatwa and Research.
- Fatawa by the Permanent Committee for Research and Fatwa.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah Ben Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.

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19. USE OF YEAST AND GELATINE TAKEN FROM SWINE

Similar Questions

- Extractions from swine;
- Food containing forbidden ingredients.

The Issue

Is it permissible for a Muslim to use yeast and gelatine that contain a small percentage of ingredients extracted from pigs in making some sweets, food and medicines?

Ruling

It is not permissible for a Muslim to use yeast and gelatine extracted from pigs in the preparation of food. Substitutes are available from vegetarian sources and animals slaughtered in the proper Islamic way. This is stated in Decision No. 23 (11/3) of the International Islamic *Fiqh* Academy, the fatwa issued by the Permanent Committee for Research and Fatwa (vol. 22, pp. 117–118 and 265) and Decision No. 3/15 of the Islamic *Fiqh* Council of the Muslim World League. The Decision states: ‘Gelatine is a substance used in preparation of sweets and some medicines. It is extracted from animal skin and bones. Therefore, the Assembly determines: 1) It is permissible to use gelatine extracted from lawful sources and animals lawful to eat and slaughtered in the Islamic way. It is not permissible to extract it from what is forbidden, such as the hide and bones of pigs and other unlawful animals and substances; 2) The Assembly urges Muslim countries and companies working in Muslim countries to refrain from importing anything that is forbidden in Islam and to make available to Muslims only what is lawful and wholesome.’

Evidence

The Qur'an and the Sunnah, as well as the unanimity of Muslim scholars, make clear that the flesh of swine is forbidden to eat. God says: 'Forbidden to you are carrion, blood, the flesh of swine.' (5: 3) The prohibition applies to what is totally or partially taken from the flesh of swine and scholars unanimously agree that the same ruling applies to lard and pig fat.

Sources

- Decisions by the Islamic *Fiqh* Council of the Muslim World League.
- Decisions by the International Islamic *Fiqh* Academy.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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20. EATING IN RESTAURANTS SERVING FORBIDDEN FOODSTUFF

Similar Questions

- Eating in places serving wines and pork;
- Frequenting restaurants serving wines and pork.

The Issue

Is it permissible for a Muslim living in a non-Muslim country to eat in a restaurant that serves wines, pork and other forbidden foodstuff?

Ruling

It is not permissible for a Muslim to eat in restaurants that serve forbidden foodstuff such as wines and pork when other restaurants that do not serve these are available. However, if it is not easy for him to eat elsewhere then eating in such restaurants is acceptable, provided that he does not eat or drink anything that is forbidden. This is the view of the Permanent Committee for Research and Fatwa.[53]

Evidence

Eating in restaurants that serve such forbidden foodstuff helps their owners in what promotes evil and transgression and God has forbidden such help. He says, ‘do not help one another in furthering evil and aggression.’ (5: 2) Permissibility when an alternative is not available is based on necessity. God says: ‘He has laid no hardship on you in [anything that pertains to] religion.’ (22: 78) and ‘God does not charge a soul with more than it can bear.’ (2: 286)

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[53] Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, pp. 296–7.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Zain al-Abideen ibn al-Shaikh Azween, Al-Nawazil fi al-Ashribah'.

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21. SITTING AT TABLE WHERE WINE IS SERVED

Similar Questions

- Sitting with people drinking intoxicants;
- Attending social gatherings where intoxicants are served;
- Attending dinner parties with wine being served.

The Issue

It happens sometimes that when a Muslim living in a non-Muslim country attends meetings, seminars and parties organized by non-Muslims, at universities or at the workplace, one has to sit at a table where drinks are served. It is often very difficult for a Muslim to avoid such situations.

Ruling

The first view is expressed by the late Shaikh Abd al-Azeez ibn Baz. He said that it is not permissible for a Muslim to sit with people drinking wines unless he makes clear his disapproval. If they do not accept, he should leave them.[54]

The second view is expressed by some contemporary scholars who make clear that the normal ruling is that it is forbidden to sit with someone drinking intoxicants. However, if a Muslim fears some adverse reaction should he refuse to attend a function or decline an invitation, he may attend. This also applies when a Muslim hopes that by accepting his neighbour's invitation, he may be able to advise him and to tell him about Islam.

Evidence

This situation comes under the rules that allow the lesser evil or accept the lesser harm in order to repel a greater one.

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[54] A. Ibn Baz, *Majmu[Fatawa Ibn Baz*, vol. 23, pp. 60–1.

The benefit of an unbeliever becoming a Muslim is much greater than the evil of being in the company of a person drinking wine. Thus, if a Muslim feels that the host has a genuine desire to know about Islam he may accept his invitation, even though the unbeliever will be drinking wine.

Sources

- Abd al-Azeez ibn Baz, *Majmu[Fatawa Ibn Baz*, edited by Muhammad al-Shuway'ir.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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22. EATING FOOD MIXED WITH TRACES OF PORK

Similar Questions

- Mixing food with a little pork;
- Cooking food in saucepans used for pork.

The Issue

A Muslim living in a non-Muslim country may encounter the problem of food being available that has been mixed with traces of pork, such as when the tools used for slaughter are used for pigs and sheep, or the food might have been boiled or fried in utensils that have been used to boil or fry pork. Alternatively lamb or beef may be cooked on a tray where pork or ham have been cooked, as happens in many restaurants. Is such food permissible to eat?

Ruling

If a Muslim is certain that the food has been contaminated with pork, it is not permissible to eat unless it is washed. If he is not certain then it is permissible to eat. This is the view of the Permanent Committee for Research and Fatwa and the late Shaikh Muhammad ibn Uthaymeen, as well as other contemporary scholars.

Evidence

In such situations, what is permissible has certainly been mixed with what is forbidden. Therefore, if it is eaten it means that something forbidden has been eaten. If the case is uncertain and there is doubt about it then the food is permissible to eat, because the normal ruling is that things are permissible and cannot become forbidden on the basis of mere doubt.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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23. FOOD CONTAINING SMALL QUANTITIES OF FORBIDDEN PRODUCTS

Similar Questions

- Eating food that contains small quantities of what is forbidden to eat;
- Food that includes a small quantity of forbidden foodstuff.

The Issue

Some types of food contain some forbidden foodstuff, such as extracts from the flesh of swine. Most of these are enzymes that help to preserve the food, but still they are extracted from the bones or fat of pigs. Are such foods permissible to eat?

Ruling

If these substances are small in quantity and they get changed through chemical reaction so as not to exist on their own, acquiring a new description or name, then their status changes and that will not affect the permissibility of the food or drink. This is the view of the late Shaikh Muhammad ibn Uthaymeen and a number of contemporary scholars.[55]

Evidence

1. The Prophet's companions used to eat cheese made by the Zoroastrians who used rennet taken from animals they had slaughtered. It is well known that their slaughtered animals are forbidden for Muslims to eat. However, using such rennet did not affect the taste or smell of the cheese, but was only used to make cheese.

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[55] *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars, p. 103; A. Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*, pp. 312–3 and 455.

2. A rule that is implemented by scholars is that when an impurity goes through transformation, its status changes. Examples include wine that becomes vinegar, an impurity that catches fire and is reduced to ashes, or an impure animal such as a dog or a pig falling into a salt facility and becoming a part of the salt product. In all such cases, the substance is changed and its name is also changed. As such, its status is changed, because the status depends on the reason that gives it such status. When the reason does not apply, the status changes.

Sources

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah Ben Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.

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SECTION 4: PERSONAL AND FAMILY MATTERS

a. MARRIAGE

24. THE DOWRY PAID BY THE WIFE

Similar Questions

- Women paying dowry;
- Man taking dowry.

The Issue

It is the local tradition in India that a woman, or her family, provides a dowry to be paid to the prospective husband, so that he would marry her. Is this acceptable?

Ruling

This is a very bad tradition and an abominable deviation. It is contrary to the divine book, the Prophet's tradition and the unanimous view of scholars. It is obligatory in Islam that the husband should pay his wife a dowry, or *mahr*. For various reasons, including men's unwillingness to tie themselves to a marital relationship, women in Western countries may resort to this practice. The Islamic *Fiqh* Council of the Muslim World League and *Majallat al-Buhuth al-Islamiyyah*, (i.e. Journal of Islamic Research), have both discussed this issue.

1. The Islamic *Fiqh* Council of the Muslim World League

Having perused the presentations by Shaikh Abu al-Hasan al-

Nadwi and Shaikh Abd al-Qadir al-Hindi on this issue, the Council approved the following decision:

One: The Council thanks both Shaikh Abu al-Hasan al-Nadwi and Brother Abd al-Qadir for their presentations of this issue and commends their efforts to stop this deviant practice and bad tradition. The Council begs them to continue their efforts in combating this and similarly bad traditions and prays to God to give them and the Muslim community guidance and success and to richly reward them for their efforts.

Two: The Council draws Brother Abd al-Qadir's attention, as well as the attention of others, to the fact that although such a marriage is contrary to Islamic marriage in this respect, it remains a valid marriage according to the overwhelming majority of Islamic scholars. Only a small number of scholars rule it invalid if it stipulates that no dowry is payable by the husband. Children born in such a marriage are fully legitimate, legally and properly attributed to both parents. This is the unanimous verdict of scholars, including those who consider the marriage invalid. Such scholars have expressed, in their books, the view that children born in such marriages are attributed to their parents.

Three: The Council's decision is that this tradition is an extremely bad and abominable deviation. It is contrary to God's book, the Qur'an, the Prophet's Sunnah, the unanimity of scholars and the practice of the Muslim community throughout its history.

In the Qur'an, God says: 'Give women their dowry as a free gift.' (4: 4) 'It is no offence for you to marry them after giving them their dowries.' (60: 10) 'To those with whom you seek to enjoy marriage, you shall give the dowries due to them.' (4: 24) Other verses confirm this.

The Sunnah makes this clear through the Prophet's statements, action and approval. An example of his words is Jabir's report: 'The Prophet says: "If a man gives a woman a dowry as little as the fill of his cupped hands in food, she is his lawful wife."' (Related by Ahmad, *hadith* No. 14,824; Abu Dawud, *hadith* No. 2,110) An example of his action is given in [A'ishah's statement: 'The Prophet's dowry to his wives was 12.5 ounces [of silver].' (Related by Muslim, *hadith* No. 1,426) His approval is mentioned in the two most authentic anthologies of *hadith* and other anthologies: ‘The Prophet noticed traces of saffron on [Abd al-Rahman ibn [Awf and asked him about it. [Abd al-Rahman said: “I have married a woman and gave her a small piece of gold in dowry.” The Prophet said: “May God bless it for you.”’ Moreover, it is universally agreed and done by Muslims in all generations and all places. All praise be to God.

Therefore, the Council decides it is obligatory that the husband should pay a dowry to his wife, whether in advance, or deferred, or partly in advance and partly deferred. If deferred, the deferment should be real, and the husband intends to pay it whenever it is within his means. It is forbidden to make a marriage contract without a dowry being paid by the husband to his wife.

The Council recommends that the dowry should be reasonable and easy to pay. It further recommends to make marriage easier through forgoing unnecessary costs and guarding against extravagance. Following this recommendation brings numerous benefits.

Four: The Council appeals to all Indian scholars, dignitaries and responsible people to resist the bad tradition of women paying dowries to their prospective husbands. They should exert considerable efforts to stop it altogether because it is contrary to the divine law, sound logic and reason.

Five: This bad tradition is not only contrary to Islamic law; it also puts women at a great disadvantage. When it is implemented, men will only marry women that can pay a handsome dowry to tempt them. Thus women belonging to rich families will get married while women belonging to poor families remain single. This leads to obvious social ills. Moreover, it makes marriage based on financial gain, while the approach to marriage should always be to choose prospective marriage partners for their good character. It is noted that in Western societies a young woman who is not rich needs to spend many years in employment so as to save a sum of money that will make her more marriageable.

Islam honours women as it requires every man to pay a dowry to the woman he proposes to marry, so that she can manage her affairs and get ready for the marriage. It thus opens a way for the marriage of women who are poor, who will be content with a modest dowry. Thus marriage becomes easier for men who are not rich.

2. The Journal of Islamic Research

In Issue 34, *Majallat al-Buhuth al-Islamiyyah* (i.e. the Journal of Islamic Research) published an article in which it stated the following: 'There is no disagreement about the clear wisdom in prohibiting the transactions that Islamic law rules as invalid. For example, it is wrong to advocate equal inheritance for son and daughter, basing the argument on equal relationship and joint responsibility in meeting life's needs. Islamic law makes clear that this argument is unsound, as evidenced by what God says: "God has this to enjoin on you with regard to your children: The male shall have a share equal to that of two females." (4: 11) The logic behind this piece of legislation is that the man is required to look after the woman, and he is responsible to take care of her financially. She has no responsibility in this regard, yet she is independent in her financial affairs. Unlike Western women, Muslim women do not need to pay a dowry to their prospective husbands. This is an aspect of the progressive nature of Islamic law which gives women full financial independence after marriage.'[56]

Sources

- The Muslim World League Website: www.themwl.org.
- *Majallat al-Buhuth al-Islamiyyah*, No. 34.
- Hamad ibn Abdullah al-Khudairi, '*Al-Nawazil fi Qada' al-Tanfiz fi al-Mu[amalat wa Fiqh al-Usrah*'.
- Badriyyah bint Abdullah al-Aqeel, '*Al-Nawazil fi al-Nikah wa Firaquh*'.

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[56] *Majallat al-Buhooth al-Islamiyyah*, No. 34, p. 184.

25. A WOMAN BECOMES A MUSLIM BEFORE HER HUSBAND

Similar Questions

- A recently converted woman remaining married to her non-Muslim husband;
- A woman converts to Islam but her husband remains non-Muslim;
- A Muslim woman remaining married to her unbelieving husband.

The Issue

A woman may adopt the Islamic faith but her non-Muslim husband chooses to continue to follow his own faith. How is the marriage contract affected? What happens to her family and children?

Ruling

Scholars differ on this question giving two distinct views:

The first view considers that such a marriage cannot continue. Many scholars say that a Muslim woman cannot remain married to a non-Muslim. According to the majority of scholars, the dissolution of the marriage occurs when the woman embraces Islam. The Hanafi scholars take a different view, saying that the dissolution does not occur by the adoption of Islam itself, but when the other party is called upon to embrace Islam. If he does, the marriage remains in force. If not, the judge orders the dissolution. It is also said that the woman who has embraced Islam waits for her husband to accept Islam for the duration of her waiting period. If he declares his acceptance of Islam during the waiting period, she remains his wife. If the waiting period lapses and he embraces Islam after that, she can choose whether to go back to him or not.

The late Shaikh Muhammad ibn Uthaymeen gave the same ruling, saying:

The question of whether a Muslim woman is unlawful to her non-Muslim husband is not subject to any scholarly verdict, because God says: ‘Believers! When believing women come to you as migrants, test them. God knows best their faith. If you ascertain that they are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them.’ (60: 10)

It is not a great issue to lose one’s child, spouse or parent in order to stick to one’s faith. Our goodly early Muslims might have disliked their parents or children when they took an attitude in opposition to the divine faith. Therefore, if a woman converts to Islam and her husband refuses to follow suit, most scholars agree that the matter is left in suspension until she has finished her waiting period. If the husband accepts Islam during this waiting period, the marriage remains in force and no dissolution takes place. If the waiting period is completed with the husband continuing to be a non-Muslim, we consider the marriage dissolved since the woman embraced Islam. She is unlawful to him unless he embraces Islam and they go through a new marriage contract.

Some scholars are of the view that when a woman converts to Islam, she remains attached to her husband until she has completed her waiting period. She cannot marry anyone during this period. If he embraces Islam in the meantime, she is his wife. If the waiting period lapses and her former husband subsequently adopts Islam, she has the choice of going back to him. This is the view that carries the stronger weight. The Prophet returned his own daughter, Zaynab, to her husband Abu al-[As ibn al-Rabi[after a six-year separation. Thus, if a wife converts to Islam and her husband remains an unbeliever, a separation is enforced. If he converts to Islam before the lapse of the waiting period, she is his wife. She has no choice in the matter. If the waiting period is over, she may marry someone else if she so desires. If she remains unmarried and he subsequently accepts Islam, she may rejoin him in marriage, even though a longer period of time has lapsed.[57]

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[57] The Message of Islam website: www.islammessage.com.

This is the view endorsed by eminent scholars including Ibn Taymiyyah and Ibn al-Qayyim, as well as Shaikh Muhammad ibn Uthaymeen and the Egyptian Dar al-Ifta in its Fatwa dated 12 July 1965. The basis of this view is the *hadith* related by Abu Dawud on Ibn [Abbas's authority that the Prophet returned his daughter Zaynab to her husband Abu al-[As on the basis of their initial marriage contract.[58] Abu al-[As declared himself a Muslim two years after the revelation of Surah 60, 'Women Tested', which includes the verses that prohibit marital relations between Muslim women and unbeliever men. It is clear that her waiting period was over much earlier. Nevertheless, the Prophet gave her back to him on the basis of their original marriage.

The fatwa issued by the Egyptian Dar al-Ifta follows the same line. The former Mufti, Shaikh Ahmad Hereedi, said:

The established ruling in the Hanafi school of *Fiqh* is that if a woman married to a follower of earlier religions, i.e. a Christian or a Jew, became a Muslim, her husband is invited to follow her example and also become a Muslim. If he does, their marriage remains valid. If he refuses, the judge will order the dissolution of the marriage because of his refusal. This judgement ends the marital relationship between them and removes any authority of the husband. The dissolution is considered an irrevocable divorce, whether the marriage has been consummated or not. This means that the husband cannot reinstate the marriage. The number of allowed divorces the husband may have is also reduced by one, even if he embraces Islam later and marries her again before she is married to someone else. In other words, if this dissolution of the marriage was the first between them and they are remarried after the husband embraces Islam, he can have no more than two divorces.

The woman must observe a full waiting period, which means that she must have three full menstrual periods after the judgement dissolving the marriage is passed. The minimum acceptable period for having such three menstruations is sixty days. If she is pregnant at the time, her waiting period lasts until she has given birth.

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[58] Related by al-Tirmidhi, *hadith* No. 1,143; Abu Dawud, *hadith* No. 2,240; Ibn Majah, *hadith* No. 2,019. Al-Albani grades the *hadith* as authentic.

If the woman is neither pregnant nor one who menstruates, either because she is young and has not attained puberty or because she is already past menopause, then her waiting period is three months from the date of the dissolution, equal to ninety days. If the marriage has been consummated the husband must support her during this waiting period because the discontinuity of the marriage is caused by his refusal to accept Islam. By the same token, if he divorces her a second time during the waiting period, this divorce is effective.

The late Shaikh Hasan Mamoon, the former Rector of al-Azhar, issued a similar fatwa, saying: 'We maintain that Islamic religious texts make clear that if a Christian woman married to a Christian man becomes a Muslim, her husband is informed about Islam and called upon to consider becoming a Muslim. If he does, their marriage remains in force. If he refuses, the judge will dissolve the marriage with an irrevocable divorce. This means that to enforce a dissolution of the marriage between a Christian woman who has converted to Islam and her Christian husband, he has to be called upon to become a Muslim. The dissolution can only take place by a judge's order after that has taken place and the husband's refusal to become a Muslim. If no judge's order of dissolution is issued, the marriage remains in force. This makes clear that if a Christian woman who has converted to Islam marries a Muslim before her Christian husband has been invited to Islam and before a judge's order of dissolution of her marriage has been issued this marriage is invalid, because she remains married to her Christian husband. An order of dissolution separating her from her second husband must be issued.'

In *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*, the author states: 'If a non-Muslim married couple adopt Islam together, their marriage is confirmed and they continue to be married. If only one of them accepts Islam while the other does not, some details need to be explained. If the one who has become a Muslim is the husband and his wife is a Christian or Jewess, their marriage remains in force, because it is acceptable that a Muslim man can marry a follower of either of these religions. If the husband becomes a Muslim and his wife does not follow either of these religions, such as being an atheist, the marriage cannot remain in force. Islam does not permit a Muslim man to marry an unbeliever, except a Christian or a Jewess. In the case where it is the wife that becomes a Muslim, her marriage becomes invalid, because a Muslim woman cannot remain married to an unbeliever, regardless of the religion he follows.'

Evidence

Those who are of this view cite in evidence the Qur'anic verse in which God says: 'Believers! When believing women come to you as migrants, test them. God knows best their faith. If you ascertain that they are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them.' (60: 10)

The second view is stated by the European Council for Fatwa and Research which adopted a decision saying that a number of scholars allow the marital relation to remain valid in full, including sexual intercourse, under certain conditions including that the husband does not put his wife under any pressure regarding her faith and she hopes that he will accept Islam. The reason is that women should not be reluctant to accept Islam if this means that they will have to separate from their husbands and families. The decision, No. 3/8, is as follows:

Having reviewed over three consecutive sessions the various papers and studies that discuss the question in depth and in detail; and having considered the different scholarly views and their bases, relating these to the essential principles and rules of Islamic jurisprudence and its objectives; and taking into account the special circumstances of new Muslim women in the West when their husbands decide to adhere to their own faiths, the European Council for Fatwa and Research reasserts that it is forbidden for a Muslim woman to marry a non-Muslim. This is unanimously agreed by Muslim scholars across all generations. However, if the marriage has taken place before the woman adopts Islam, the Council decides:

1. If the couple convert to Islam together and the wife is not someone whom the husband cannot marry under Islamic law, such as being absolutely forbidden to him to marry because of being related to him through family or breastfeeding, their marriage remains valid and in force.
2. If only the husband adopts Islam and there is no valid reason to prevent their marriage and the wife follows a divine religion, their marriage remains valid.
3. If the wife adopts Islam while the husband retains his religion, the Council decides:
   a. If she becomes a Muslim before the consummation of the marriage, separation between them must be immediately enforced;
   b. If the marriage has already been consummated before the wife adopts Islam and her husband then decides to be a Muslim before her waiting period is over, the marriage remains valid.
   c. If she accepts Islam after her marriage has been consummated, and her waiting period is completed, she may, if she wishes, wait for him to accept Islam, even though this may take a long time. If he decides to become a Muslim, their initial marriage is valid and there is no need to reconfirm it.
   d. If the wife chooses to marry someone else after her waiting period is over, she must seek a dissolution of the marriage through the court.

4. According to the four schools of Islamic jurisprudence, the wife may not stay with her husband after her waiting period is over. Nor is she allowed to have intercourse with him. However, some scholars are of the view that she may stay with him with all their marital rights and duties in place provided that he does not put any pressure on her with regard to her faith and she hopes that he will embrace Islam. The reason

> is that women should not be reluctant to accept Islam if this means that they will have to separate from their husbands and families. In advocating this view, these scholars rely on the judgement of [Umar ibn al-Khattab, the second Caliph, when he gave a woman who embraced Islam while her husband did not the choice 'to part with him or to stay with him.' This is an authentic report by Yazid ibn [Abdullah al-Khutami. They also rely on the verdict of the fourth Caliph, [Ali ibn Abi Talib, who says that if a Christian woman married to a Jewish or Christian man embraces Islam, he retains his right of physical marital relations with her, because he has a contract. This is also an authentic report. The same view is reliably reported to be also shared by Ibrahim al-Nukha[i, al-Sha[bi and Hammad ibn Abi Sulayman.[59]

The late Shaikh Faisal Mawlawi, former Vice-President of the European Council for Fatwa and Research, wrote a study under the title 'Status of a Woman Convert to Islam Whose Husband Remains Non-Muslim.'[60] In this study, Shaikh Mawlawi expressed his disagreement with the study of Shaikh Abdullah al-Judai on the same subject. He started with an exposition of the conclusions arrived at by Shaikh al-Judai then he says that the case is subject to clear Qur'anic texts: 'Do not give your women in marriage to men who associate partners with God unless they embrace the true faith. Any believing bondman is certainly better than an idolater, even though the latter may well please you.' (2: 221) 'Do not hold on to marriage ties with unbelieving women.' (60: 10) These verses make clear that a woman who embraces Islam cannot remain married to a non-Muslim, which is the opposite of the conclusion of al-Judai's study.

Shaikh Mawlawi refuted the claim that the Prophet's companions and their successors unanimously approved of the continuity of marriage between a Muslim woman and a non-Muslim, stressing that the marriage contract becomes invalid. He explained the views of [Umar ibn al-Khattab, [Ali ibn Abi Talib and other companions of the Prophet, their successors and scholars. He examined the evidence cited by Shaikh al-Judai in support of a woman remaining with her non-Muslim husband after she converts to Islam. He concluded with the view that the marriage must be dissolved if the woman becomes a Muslim without her husband, and explained how this is done and the reasons for it.

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[59] The Journal of the European Council for Fatwa and Research, Vol. 2, No. 2, pp. 13–205.

[60] Ibid., Vol. 2, No. 2, pp. 243–308.

Fiqh councils and assemblies have also discussed this question. The final statement of the second convention of the Assembly of Muslim Jurists of America[61] states: 'If a woman embraces Islam while her husband remains non-Muslim, sexual intercourse between them immediately becomes forbidden. The marriage bond remains suspended during the woman's waiting period. If the husband embraces Islam, the marriage remains valid and in force. If he chooses to retain his faith after the woman's waiting period is over, the wife has a choice: she either applies to the court for the dissolution of her marriage or waits for her husband hoping that he will accept Islam. Whenever he does, they resume their marriage.'

Sources

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- The European Council for Fatwa and Research.
- The Journal of the European Council for Fatwa and Research (Dublin), Vol. 2, No. 2.

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[61] This convention was held in collaboration with the Muslim Association in Copenhagen, Denmark, 4–7 Jumada 1425 AH, 22–25 June 2004.

26. FRIENDS' MARRIAGE IN WESTERN COUNTRIES

Similar Questions

- Marriage of convenience for Muslims in the West;
- The friends' marriage.

The Issue

This is a marriage under which the woman provisionally relinquishes her rights of home, financial support and staying with her husband until the couple's circumstances improve. In this marriage, the young couple get married with a perfectly legitimate contract that fulfils all requirements, including the attendance of the woman's guardian, two witnesses and the payment of a dowry by the husband. However, they do not have a place of residence. They consort together, but each of them stays with their own families. Thus it is not a *mit[ah* marriage, which is for a limited period, nor is it a marriage that does not fulfil the requirements. It is a marriage in which the husband makes a condition that his wife relinquishes specific rights of financial support, home, etc. The reason is that house prices are very high in Western countries.

Ruling

The first view considers this marriage permissible if it fulfils the normal requirement of marriage and if it is free of restrictions that render it invalid. In its eighteenth session, the Islamic *Fiqh* Council approved it even though it considers such marriage discouraged. The Council's decision reads:

In its eigthteenth session held in Makkah 10–14 Rabi[I 1427 AH, 8–12 April 2006, the Islamic *Fiqh* Council at the Muslim World League approved the following decision on the subject of 'New Marriage Contracts':

To make a marriage contract in which the woman relinquishes her rights of home and financial support and equal treatment with other wives, or some of these, and under which she agrees that her husband comes to her home at any time of night or day; and to make a marriage contract under which the woman remains in her family's home while she and her husband meet in her family's home or any other place, because they do not have the means to have their own home and cannot support themselves; are valid if the essential requirements and conditions of marriage are fulfilled and there are no circumstances to prevent marriage between them. However, making such arrangements is discouraged.

The same fatwa is given by the late Shaikh Abd al-Azeez ibn Baz when he was asked about the ruling for *al-misyar* marriage contract, which involves a man marrying a second, third or fourth wife who is required by her special circumstances to stay in her parents' home and where her husband visits her at different times, as their circumstances allow. His answer was: 'There is no harm in making such arrangements, provided that the contract fulfils the proper requirements, namely, the presence of the woman's guardian, agreement by both parties, the presence of two witnesses of integrity and the freedom of both partners from anything that prevents marriage between them. This is allowed because of the general nature of the *hadith* that quotes the Prophet as saying: "The first condition that you must fulfil is a condition that makes your wife lawful to you." (Related by al-Bukhari, *hadith* No. 2,721) He also says: "Muslims abide by their conditions." (Related by al-Bukhari, *hadith* No. 3,594) If the couple agree that the woman stays with her family, or that her share will be in the day, rather than the night, or on particular days or nights, they are free to do so, provided that the marriage is publicized, not kept secret.'[62]

Al-misyar marriage is in essence the same as the 'friends' marriage or the marriage of convenience in non-Muslim countries. A number of contemporary scholars have given the same view, as well as most *Fiqh* councils.

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[62] *Fatawa [Ulama' al-Balad al-Haram*, pp. 450–1.

The second view, which is the view of some contemporary scholars, considers the marriage valid but the condition invalid if it is mentioned in the contract. Indeed, some scholars of the Shafi[i and Hanbali schools of Islamic jurisprudence make clear that the marriage is valid but conditions are not. Ibn Qudamah, a leading Hanbali scholar says: ‘If the husband stipulates a condition that she is paid no dowry or is not looked after or that she gets a larger or lesser share than his other wife, such conditions are not valid, but the marriage is valid.’ This means that whenever the wife asks her husband to provide her with a home, or financial support or equal treatment, he must give her that or divorce her. Imam al-Nawawi, a leading Shafi[i scholar says: ‘If the condition contradicts what the marriage entails but does not violate its primary purpose, such as a condition that the husband does not marry another wife, or that he gives her no financial support, the marriage is valid and the condition is ineffective.’

The third view makes clear that if the condition is stipulated in the marriage contract the marriage is considered null and void unless it has been consummated. If it is consummated, the marriage remains in force but the condition is void and she is entitled to her dowry.

The Maliki school of Islamic jurisprudence considers that if a condition is included in the contract that the woman is not entitled to financial support, the marriage is dissolved unless it has been consummated. If it is consummated, the marriage is in force and she is entitled to a dowry at the same level of women in her social status, but the condition is null and void. Speaking about conditions in marriage, [Ulaysh says in his annotation of *Mukhtasar Khalil*: ‘The second type includes conditions that are contrary to what the marriage entails, such as the husband makes a condition that he does not give her equal share with his other wife, or that he gives another wife favourable treatment, or that he does not look after her living needs or does not buy her any clothes. [...] Such conditions may not be included in the marriage contract and if they are they make the marriage null and void. Scholars, however, differ, with some saying that the marriage is nullified before or after consummation while others saying that it is nullified if the condition is made before consummation of the marriage but remains in force if it is after consummation, but the condition itself is void. This is the best supported view.'

If a wife relinquishes her rights to financial support, residence or fair treatment after the marriage, with full consent and under no pressure, this is appropriate. She may change her mind at any time. Ibn Qudamah said in *Al-Mughni*: 'If a woman fears ill-treatment or desertion by her husband, because he does not like her or because she is ill or old or lacking appeal, she may forego some of her rights to please him. God says: "If a woman has reason to fear ill-treatment or desertion by her husband, it shall not be wrong for the two of them if they should try to set things peacefully to rights between them; for peace is best."' (4: 128)

Sources

- *Fatawa* by Scholars of Makkah.
- Collected rulings and articles by Shaikh Abd al-Azeez ibn Baz.
- The Islamic Network.
- Islam Question and Answer: www.islamQA.info.
- Decisions by the Islamic *Fiqh* Council.

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27. MARRIAGE TO A CHRISTIAN OR JEWESS

Similar Questions

- Marrying a Christian woman;
- Marrying a Jewish woman.

The Issue

That a Muslim man can marry a woman who follows a divine religion, whether a Christian or a Jewess, is acceptable as mentioned in the Qur'an. There is hardly any disagreement about it. However, a problem has arisen these days because those who claim to be Christian or Jews mostly observe nothing of the values of these religions and immorality is widespread among them.

Ruling

The majority of scholars, of olden days and contemporary times, agree that it is permissible for a Muslim man to marry a woman who follows a divine religion. However, some people who belong to Christianity and Judaism declare themselves atheists. In addition, fornication and adultery are commonplace in their societies to the extent that the majority of people do not disapprove of it. Indeed, those who do not practise fornication before marriage are considered odd. In view of all this, contemporary scholars adopt more restrictive views on the matter. Here are some of their fatwas.

Shaikh Abd al-Azeez ibn Baz was asked about marrying women of other divine religions and his answer was: 'This is permissible according to the majority of scholars, as God says: "The virtuous women from among the believers and the virtuous women from among those who were given revelations before you [are also lawful to you] when you give them their dowers, taking them in honest wedlock, not in fornication, nor as mistresses.”’ (5: 5) The stress here is on women who are virtuous and free. Explaining this verse, Ibn Kathir said: ‘The verse mentions virtuous believer women, i.e. virtuous women who believe in earlier revelations, stressing that they are free and virtuous as a prelude to what comes afterwards. The worst situation is to marry a woman from another religion who is not virtuous.’

Al-Azhar also gave rulings that make such marriages lawful. Shaikh Abd al-Rahman Quraah gave a fatwa dated 16 Jumada II 1343 AH, 11 January 1925, to this effect. In a case presented before him, he said: ‘It is permissible in Islam that a Muslim marries a follower of a divine religion, whether she is Christian or Jewish, provided that both are free of any condition that makes marriage unlawful. If the two parties in the case presented in the question and mentioned in the marriage document attached to the question are responsible adults and they performed their marriage contract, with a commitment by one and acceptance by the other with witnesses present at the place where the contract is made, and if the witnesses were listening together and aware that what the two parties present before them performed was a marriage contract, the marriage contract is valid and all its effects are realized. It is not a condition that the witnesses should be Muslims. Whoever holds the marriage tie is also able to terminate it by divorce. This means that the Egyptian Muslim husband in the case presented may divorce his Christian wife in front of the authorized Egyptian officials.’

Decisions by assemblies and councils of Islamic jurisprudence also make clear that such marriage is lawful.

The Assembly of Muslim Jurists of America adopted a decision saying that a follower of earlier revelations is a woman whose overall affiliation to Christianity or Judaism is confirmed. The decision explains that a marriage contract with a virtuous woman of this type is valid, and such a marriage is lawful, but discouraged. It involves serious matters, particularly with respect to the upbringing of children. The decision further explains that such a wife has full rights to practise her own religion and if divorced to have custody of her children until the children are seven years of age, unless the child is exposed to harm with respect to its faith.

The European Council for Fatwa and Research also stated in its decision 6/14 on the question of marriage between a Muslim man and a woman who follows an earlier divine religion. The decision said:

Having reviewed the question of marriage to women of other divine religions and the papers presented on the subject, and having held extensive discussions on the matter, the Council adopts the following decision:

A woman of a divine religion is one who believes in a faith that was, in its original form, bestowed by God such as Judaism and Christianity. As such, she believes, generally speaking, in God, His messages and the Day of Resurrection. She is neither atheist or apostate, nor a believer in a religion which cannot be confirmed as divine. The majority of Muslim scholars consider marriage with such a woman to be lawful, as God says in Surah 5, The Repast, which was one of the latest surahs to be revealed: 'Today, all the good things of life have been made lawful to you. The food of those who were given revelations is lawful to you, and your food is lawful to them. And the virtuous women from among the believers and the virtuous women from among those who were given revelations before you [are also lawful to you] when you give them their dowries, taking them in honest wedlock, not in fornication, nor as mistresses.' (5: 5) A number of scholars of olden days, such as [Abdullah ibn [Umar who was a companion of the Prophet, considered such a marriage reprehensible, but the view of the majority is the correct one as made clear in the above-quoted Qur'anic verse.

1. Considerations that must be heeded when marrying a follower of an earlier divine religion:

First, ascertaining that the woman believes in a divine faith, as clearly mentioned earlier. It is well known in today's Western countries that not every girl born to Christian parents is herself Christian. Likewise, not every girl brought up in a Christian environment is necessarily Christian. She may be a Communist and materialist, or she may belong to a sect that Islam does not recognize, such as Baha'ism.

Secondly, she must be virtuous. God has not permitted marriage with any follower of a divine religion, He has restricted permissibility making it applicable only to those who are virtuous. A virtuous woman is one who refrains from fornication and adultery or has sincerely repented such actions.

Thirdly, she must not belong to people who are hostile to Islam and Muslims, unless it is ascertained that she does not share the views of her people and their hostility. God says: ‘You shall not find people who truly believe in God and the Last Day on friendly terms with those who contend against God and His Messenger.’ (58: 22) Marriage establishes a relationship that is more than friendly, as God says: ‘Among His signs is that He creates for you spouses out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you. In this there are clear signs indeed for people who think.’ (30: 21)

Fourthly, marriage to such a woman must not lead to harm, whether certain or likely. Indeed this condition applies to every permissible thing. If it is clear that the practice of a permissible thing will lead to a general harm, then such practice is generally outlawed, and if it leads to harm in particular situations, it is outlawed where such situations apply. The greater the harm the more stringent is the prohibition. The Prophet says: ‘There shall be no infliction of harm on oneself or others.’ (Related by Ibn Majah, *hadith* No. 2,340)

Harm that may result from marrying a non-Muslim woman may take several forms, such as having a negative effect on Muslim women who are of marriageable age, particularly if it becomes widespread. Another aspect of harm is that some people may not heed the condition that such a woman must be virtuous, as the Qur’an makes clear. Such a marriage may also have negative consequences with regard to the upbringing of children. Likewise, it may influence the attitude of the Muslim husband towards various matters that his wife finds acceptable but are unacceptable in Islam. Even if he dies, she may not observe the Islamic conditions with regard to his burial and inheritance.

The Islamic Network said: Scholars have differed with regard to the conditions that permit marriage with a follower of an earlier divine faith. Some of them stipulate two conditions: 1) That she should descend from the Children of Israel; and 2) that she should be virtuous, not an adulteress. Most scholars agree that the most important condition for such permissibility is that she must be virtuous, i.e. she is not an adulteress or careless about morality. A number of the Prophet's companions married Christian women and considered such marriage permissible. However, [Abdullah ibn [Umar spoke out against such marriage, and [Umar himself was reported to have held a similar view. Virtuousness means that she does not show her charms as loose women do.

Sources

Majallat al-Buhuth al-Islamiyyah, No. 21.

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- Salim ibn Abd al-Ghani al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*.
- Ali ibn Nayef al-Shahhood, *Al-Khulasah fi Fiqh al-Aqaliyyat*.
- Ibn Qudamah, *Al-Mughni*.

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28. MARRIAGE TO A COMMUNIST MAN

Similar Questions

- Marriage between a Muslim woman and a Marxist man;
- Marriage between a Muslim woman and an atheist man belonging to a Muslim family.

The Issue

Communism has become widespread among Muslims in some countries to the extent that Muslims have become a minority. Hence the situation arises where a Muslim woman may not find a suitable husband who is not a Communist. Moreover, some Communists declare that there is no deity other than God and that Muhammad is God's messenger.

Ruling

It is forbidden for a Muslim woman to marry a Communist who is an atheist and does not believe in God. Such a person is an unbeliever. The basis of this prohibition is the Qur'anic verse that says: 'Do not marry women who associate partners with God unless they embrace the true faith. Any believing bondwoman is certainly better than an idolatress, even though the latter may well please you. And do not give your women in marriage to men who associate partners with God unless they embrace the true faith. Any believing bondman is certainly better than an idolater, even though the latter may well please you. These invite to the fire; whereas God invites to paradise and to the achievement of forgiveness by His leave. He makes plain His revelations to mankind so that they may bear them in mind.' (2: 221)

Councils and assemblies of Muslim scholars agree that a marriage between a Muslim woman and a Communist man is forbidden.

The Islamic *Fiqh* Council at the Muslim World League studied the question of Communism in its first session held on 17 Sha[ban 1398 AH (1978) and issued a decision outlining the Islamic verdict on Communism and belonging to it. The decision states: 'The Council draws the attention of Muslim countries and communities throughout the world to the fact that Communism is totally contrary to Islam and that to believe in it means disbelief in the faith God wants people to embrace. It destroys human principles and moral values and it is detrimental to human society [...] . In view of all this, marriage to a Communist is unlawful. This is the ruling of a number of contemporary scholars.'

Fatwa by the General Secretary of the Assembly of Muslim Jurists of America:

It is forbidden for a Muslim woman to marry a non-Muslim, and this is unanimously agreed by all Muslims. Such a marriage is invalid according to all Muslims. Any woman who considers it lawful renounces her faith and disbelieves in God. A woman who accepts such a marriage, believing that it is forbidden, commits a cardinal sin and gross indecency, leading her to the precipice of disbelief and apostasy. Indeed some scholars consider her an apostate by virtue of her action, because a marriage contract naturally leads to making sexual pleasure and intercourse lawful. It is impossible to imagine that marriage to such a person does not imply such a relationship and its being lawful.

The reason for the prohibition of such a marriage is that it leads to turning people away from religion. The Qur'an expresses this as God says of such unbelievers: 'These invite to the fire.' (2: 221) In other words, as they share life with them they urge others to do what condemns them to hell. They may call on their partners to disbelieve outright, or they may try to create doubt in their minds about Islam and urge them not to practise it. A woman is normally in a weaker position and man can often influence her view of things.

That a Muslim woman cannot marry a non-Muslim, and if she does then her marriage is null and void, is evidenced by the verse that says: 'Do not give your women in marriage to men who associate partners with God unless they embrace the true faith. Any believing bondman is certainly better than an idolater, even though the latter may well please you. These invite to the fire; whereas God invites to paradise and to the achievement of forgiveness by His leave.' (2: 221) According to al-Qurtubi, this is a definitive statement which makes it absolutely forbidden to have any marital relationship between a Muslim woman and an unbeliever. Another verse in the Qur'an says: 'Believers! When believing women come to you as migrants, test them. God knows best their faith. If you ascertain that they are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them.' (60: 10) This verse forbids marriage between Muslim women and unbelievers. In the early days of Islam, this was possible, but the permissibility was subsequently withdrawn. Al-Shafi[i said: 'If a woman converts to Islam, or is born in a Muslim family, or if one of her parents accepts Islam when she is still a child that has not attained puberty, no unbeliever, whether of earlier divine religions or an idolater may marry her.'

The excuse some people advance that there are not enough men is absolutely false, from both the religious and the practical points of view. From the religious perspective, those who cannot get married must maintain their chastity until they have the means, as God says in the Qur'an: 'As for those who are unable to marry, let them live in continence until God grants them sufficiency out of His bounty. And if any of your slaves desire to obtain a deed of freedom, write it out for them if you are aware of any good in them; and give them something of the wealth God has given you.' (24: 33) In this verse God gives an order to those who do not have the means to get married to remain patient and live in continence until God has given them plenty. He does not give them a concession to commit fornication, marry their close relatives or marry non-Muslim men. The Prophet also says: 'Young men, whoever of you can afford it, should get married. It helps to lower one's gaze and maintain chastity. Whoever cannot get married should fast, as fasting provides him with a shield.' (Related by al-Bukhari, *hadith* No. 5,065; Muslim, *hadith* No. 1,400) The Prophet points out that fasting should be resorted to when one is unable to get married, either because one lacks the means or because there is not a suitable candidate.

From the practical perspective, we all know, and everyone who is connected with Muslim communities in the West knows, that men who are looking to get married are always in plenty. Any Muslim woman who conducts herself as Islam requires and attends a mosque will not be short of offers of marriage. If she truly looks for a happy married life that helps her remain virtuous, she will be able to choose the right husband.

In short, a Communist is an unbeliever who does not belong to any divine religion. As such he cannot be married to a Muslim woman.

Sources

- The Islamic *Fiqh* Council.
- The Assembly of Muslim Jurists of America.

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29. MARRIAGE BETWEEN A MUSLIM AND A BAHAI63

Baha'ism is a creed concocted with elements from Buddhism, Brahmanism, pagan beliefs, Zoroastrianism, Judaism, Christianity and Islam as well as some esoteric beliefs.

The Issue

A man who follows Bahai'ism proposes to marry a virtuous Muslim woman. What should be the answer? On the other hand, can a Muslim man propose to marry a Bahai woman? Is she a Muslim, or a follower of a divine religion? Or is she an unbeliever who are unlawful for Muslims to marry.

Ruling

Muslims are unanimous that a Muslim woman may not marry a non-Muslim. It is also universally agreed that Bahais are unbelievers. As such, they may not marry Muslim women. Many scholars and authorities have outlined their ruling on this question. The basis of the prohibition of marriage with an unbeliever woman is the Qur'an, as it says: 'Do not marry women who associate partners with God unless they embrace the true faith. Any believing bondwoman is certainly better than an idolatress, even though the latter may well please you.' (2: 221) 'Do not hold on to marriage ties with unbelieving women.' (60: 10)

What scholars say:

1. **Shaikh Jad al-Haq Ali Jad al-Haq,** former Rector

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[63] Bahai'ism is a recent religion started by a man called Husain Ali, who was nicknamed Baha'. He claimed to be a prophet and alleged that Islamic jurisprudence is abrogated as a result of his mission.

of al-Azhar, issued a fatwa on 1 Safar 1401 AH, 9 December 1980, which said: ‘All Muslims agree that the Bahai’ or Babi faith is not an Islamic one. Anyone who believes in this religion is not a Muslim. As such, he is an apostate, i.e. someone who abandoned Islam to adopt another faith. God says: “They shall not cease to fight you until they force you to renounce your faith, if they can. But whoever of you renounces his faith and dies an unbeliever, his works shall come to nothing in this world and in the world to come. Such people are destined for hell, wherein they shall abide.” (2: 217) Islamic scholars agree that apostasy incurs the death penalty if the apostate persists, as the Prophet says: “Whoever changes his faith, kill him.” (Related by al-Bukhari, *hadith* No. 3,017) Likewise, scholars are in agreement that if an apostate gets married his marriage is invalid, whether he marries a Muslim or a non-Muslim woman, because he is unfit to be married and he is under a sentence of death if he persists and does not renounce the new religion he has adopted.’

Bearing all this in mind, the case presented is that of a man who converted to the Bahai religion, which means that he is an apostate who renounced the Islamic faith. As the lady putting this case is a Muslim, she cannot marry him. If a marriage contract is made between them it is invalid, and their marital relations become adultery, which is forbidden in Islam. God says: ‘He who seeks a religion other than self-surrender to God, it will not be accepted from him, and in the life to come he will be among the lost.’ (3: 85)

2. **Shaikh Abd al-Azeez ibn Baz** ruled that the Baha’is are unbelievers. A question was put to him about those who believed in the man called Baha’ullah who claimed to be a prophet and a manifestion of God: can their dead be buried in Muslim graveyards. In his answer, Shaikh Ibn Baz said:

If the Baha’i faith is as you have described, then there is no doubt that the Baha’is are unbelievers and they may not be buried in Muslim graveyards. Anyone who claims prophethood after Prophet Muhammad is a liar and unbeliever according to Islamic religious texts and to the unanimity of Muslims. His claim is contrary to what God has stated: ‘Muhammad is not the father of any one of your men, but is God’s Messenger and the seal of all prophets. God has indeed full knowledge of everything.’ (33: 40) It is also contrary to a large number of *hadiths* making clear that Muhammad was God’s last messenger and that no prophet would ever be sent after him. The same applies to anyone who alleges that he or any creature is a manifestation of God. A person who makes such an allegation is an unbeliever according to the unanimous agreement of all Muslims, because God does not come to any one of His creatures. He is far too superior to do that. A claim of this sort is in clear contradiction with the various verses and *hadiths* which make clear that God is above the Throne and that He is above all His creation. Nothing bears any similarity or comparability to Him. He has informed His servants about Himself, saying: ‘Your Lord is God who has created the heavens and the earth in six aeons, and is established on the throne.’ (7: 54) ‘The Lord of Grace, established on the throne of His almightiness.’ (20: 5) He informs us about Himself: ‘This is all because when God alone was invoked, you denied this truth; whereas, when partners were associated with Him, you believed in them! All judgement rests with God, the Exalted, the Supreme One.’ (40: 12) ‘To Him ascends all good words, and He exalts the good deed.’ (35: 10) Their claim contradicts many other Qur’anic verses that make clear that God is above all His creation and above His throne. He is established on the throne in a way that is suited for His majesty and almightiness and unlike how they are established. None other than Him knows how He is established on the throne, nor His own nature. What I have explained is the belief of Sunni Muslims preached by all God’s messengers and His final messenger, Muhammad (peace be upon him). It is the belief of the four rightly-guided Caliphs, all the Prophet’s companions and their true successors, generation after generation up to the present.

I would like to add that I have not read any Baha'i book until now, but I have learnt from numerous sources that Baha'ism is a deviant creed and it is alien to Islam. However, after writing this answer to the question that has been put to me, I read a debate between a Sunni Muslim and a Baha'i published over four issues of a magazine published in Cairo called *Al-Hady al-Nabawi*. I read three of these four issues, two of which were published in Ramadan and Dhul-Qaadah 1368 AH (1949) and the other in Rabie II 1369 AH (1950). In this debate, the Baha'i respondent said very clearly that Baha'ullah, their prophet, alleged that he was a messenger of God who amended all previous divine laws and messages, making them easier to follow. He also said that every age needs a messenger of God. He denied the angels, claiming that in fact they were only the spirits of good believers. His statements indicate that he does not believe in the physical resurrection of mankind, and he denies what the Prophet has said about the Impostor. Undoubtedly their leader's claim of being a messenger of God and that every age needs a messenger is clear disbelief.

3. **Other contemporary scholars** have ruled such a marriage to be forbidden. One of them says: A marriage between a Muslim man and a Baha'i woman is invalid. Needless to say, a marriage between a Muslim woman and a Baha'i man is even more so. Islam does not permit a marriage between a Muslim woman and a follower of earlier divine religions. The prohibition applies even more strongly to a man who does not believe in a divine book. It is not permissible for a marriage to be effected between a Muslim, man or woman, and a Baha'i. The marriage cannot be initiated and cannot continue if either marriage partner converts to Baha'ism. It is an invalid marriage and it must inevitably be dissolved. This has been upheld by the courts in Egypt on more than one occasion. Justice Ali Mansoor ruled on a case of this sort, ordering the dissolution of the marriage on the basis of absolutely clear religious evidence. His ruling was published in a separate pamphlet. May God give him rich reward for what he did.

Decisions of *Fiqh* Councils:

1. The Islamic *Fiqh* Academy approved in its fourth conference held in Jeddah, Saudi Arabia 18–23 Jumada II 1408 AH, 6–11 February 1988, a decision that says:

- Having reviewed the decision of the fifth summit which required the Islamic *Fiqh* Council to publish its views on the creeds that are contrary to the teachings of the Qur'an and the Sunnah;
- Taking into account the dangers that Baha'ism represents for Muslims worldwide and the support it receives from various quarters that are hostile to Islam;
- Having looked in depth into the beliefs of this sect and confirmed that its founder, Baha'ullah claimed to be a prophet, and his writings were revelations from on high. He also called on all mankind to believe in his message, denied that Prophet Muhammad was the last of God's messengers, claimed that his books abrogated the Qur'an, and believed in reincarnation;
- Having considered the numerous changes Baha'ullah introduced into the details of *Fiqh* and dropped others: he changed of the number of obligatory prayers and their times, making them nine prayers offered in three lots, three early in the morning, three at midday and three before sunset; changed the dry ablution, i.e. *tayammum*, so as to make it merely a verbal sentence, 'In the name of God the most pure, the most pure'; reduced fasting to 19 days that end on the *nayrooz*, which falls on 21 March; changed the direction of prayer so as to face Baha'ullah's home in Acre, occupied Palestine; forbade jihad; dropped mandatory punishment; changed the inheritance system so as to give men and women equal shares; and made usury lawful; and
- Having reviewed the presented papers on 'areas of Islamic unity' which included warnings against

> suspicious movements that seek to divide the Muslim community, undermine its unity and lead to apostasy and renunciation of Islam; **the Council decides that:**

What Baha'ullah has claimed of being a messenger of God receiving revelations from on high, and the abrogation of the Qur'an, and the changes he introduced into religious details that are confirmed aspects of Islam, represent a denial of matters that are essentially known to be part of the faith. Whoever denies such matters is an unbeliever according to the universal agreement of the Muslim community.

2. The European Council for Fatwa and Research

The Council considers it permissible that a Muslim man marries a follower of an earlier divine religion, but makes clear that Baha'ism is totally unacceptable as a creed. In its statement concluding its fourteenth session, the Council said: 'Not every girl brought up in a Christian environment is necessarily Christian. She may be a Communist and materialist, or she may belong to a sect that Islam does not recognize, such as Baha'ism.'

3. The *Fiqh* Council in Makkah

In its fourth session, the Islamic *Fiqh* Council in Makkah unanimously adopted a decision in which it stated: 'First, all scholars are in agreement that a marriage between a Muslim woman and a non-Muslim is strictly forbidden, as this is the clear import of religious texts. God says: "Do not give your women in marriage to men who associate partners with God unless they embrace the true faith. Any believing bondman is certainly better than an idolater, even though the latter may well please you. These invite to the fire; whereas God invites to paradise and to the achievement of forgiveness by His leave." (2: 221) He also says: "Believers! When believing women come to you as migrants, test them. God knows best their faith. If you ascertain that they are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them. Nonetheless, hand back to the unbelievers the dowries they have paid them." (60: 10) Repetition in the verse is clearly noted: "They (i.e. the believing women) are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them." This repetition stresses the prohibition very emphatically, so as to totally sever a relationship between a believing woman and an unbeliever. This clear prohibition is followed by the divine order "Nonetheless, hand back to the unbelievers the dowries they have paid them." Thus the unbeliever husband is refunded what he paid for his marriage when his wife has embraced Islam so as not to combine the loss of his marital relation with a financial loss. This verse makes clear that when an unbelieving woman becomes a Muslim, she is no longer lawful to her unbelieving husband and their marriage is automatically dissolved [...] how can anyone imagine that a marriage between a Muslim woman and an unbeliever can be initiated? Indeed, God has made clear that when an unbelieving woman, married to an unbeliever, embraces Islam she may marry a Muslim man after her waiting period is over. This is clearly stated in the same verse: "It is no offence for you to marry them after giving them their dowries." (60: 10)

'Secondly, it is not lawful for a Muslim man to marry an unbeliever, as God says: "Do not marry women who associate partners with God unless they embrace the true faith. Any believing bondwoman is certainly better than an idolatress, even though the latter may well please you." (2: 221) "Do not hold on to marriage ties with unbelieving women." (60: 10) When this verse was revealed, [Umar divorced his two wives who were unbelievers.'

Ibn Qudamah said: 'As for all unbelievers other than the followers of divine religions, such as those who worship statues, stones, trees, animals and the like, it is unanimously agreed by all scholars that their women are forbidden for Muslims to marry and their slaughtered animals forbidden to eat.'[64]

Fatwas forbidding marrying Baha'i women

Furthermore, numerous fatwas have been issued by Muslim scholars declaring that the Baha'is are unbelievers, having nothing to do with Islam, and that one must be cautious in dealing with them. Shaikh Saleem al-Bishri, the former Rector of al-Azhar issued a fatwa in 1910, stating that all Baha'is are unbelievers.

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[64] Ibn Qudamah, *Al-Mughni*, vol. 7, p. 131.

On 30 June 1946, an Egyptian religious court dissolved the marriage of a woman because her husband converted to Baha'ism, considering him as an apostate who renounced Islam.

In 1947, the Fatwa Committee of al-Azhar issued a fatwa making clear that the Baha'is are apostates. This fatwa confirmed an earlier one, issued in 1939, by the Egyptian Dar al-Ifta declaring a Baha'i as an apostate. Another fatwa by the same Dar al-Ifta in Egypt was issued in 1968, stating: 'Whoever converts to the Baha'i religion is an apostate, renouncing Islam. Such a person must be called upon to repent. He is given a thorough explanation of Islam and his doubts, if any, are discussed and removed. If he repents, all well and good, if not, he incurs the death penalty.'[65]

In 2003, the Institute of Islamic Research at al-Azhar issued a fatwa saying: 'The Baha'i creed and similar ones are like dangerous intellectual epidemics. The state must mobilize its resources to combat and defeat them.'

Sources

- *Majallat al-Buhuth al-Islamiyyah*, Nos. 26 and 67.
- Islam Question and Answer: www.islamQA.info.
- Home page for IslamWeb.net website: www.islamweb.net.
- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- Fatawa by the Egyptian Dar al-Ifta.
- Fatwa by Shaikh Jad al-Haq, former Rector of al-Azhar, issued 8 December 1981.
- Decisions by the Islamic *Fiqh* Council, Makkah.
- Decisions by the Islamic *Fiqh* Academy.

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[65] Fatawa by Dar al-Ifta, vol. 6, No. 2,138.

30. MARRIAGE UNTIL CHILDBIRTH

Similar Questions

- Temporary, or *mit[ah*, marriage.

The Issue

A man goes through a marriage contract with a woman but states in the contract that if she gives birth to a child, then she is divorced. The purpose of such a marriage is clearly to have sexual pleasure for a period of time, whether defined or not.

Ruling

Contemporary scholars are in agreement that a marriage terminating at childbirth is invalid. This is confirmed by the Islamic *Fiqh* Council of the Muslim World League in its eighteenth session held in Makkah, 10–14 Rabi[I 1427 AH, (2006). A fatwa by the Permanent Committee for Research and Fatwa also considers such a marriage forbidden. It says: ‘Temporary marriage is a *mit[ah* marriage which is invalid according to religious texts and the unanimous agreement of Sunni Muslims. A *hadith* reported by [Ali ibn Abi Talib and entered by al-Bukhari and Muslim in their authentic anthologies of *hadiths* states that “God’s messenger prohibited temporary marriage, and eating donkey meat at the time of the expedition of Khaybar.” Another version mentions that the Prophet “prohibited temporary marriage at the time of the Battle of Khaybar.” A *hadith* quotes the Prophet as saying: “I had permitted temporary marriage, but now God has forbidden this until the Day of Judgement. Whoever has a woman on these terms must let her free, but do not take back any part of what you have given them in dowry.”’ (Related by Muslim, *hadith* No. 1,406)

‘Intercourse in a temporary marriage is considered adultery which incurs all the rulings applicable to adultery, if he is aware of the invalidity of such a marriage. Lawful marriage is that which is initiated by a marriage contract with a woman with the intention that the marriage will be for life if it goes well, or else is terminated by divorce. God says: “Divorce may be [revoked] twice, whereupon a woman may either be retained in fairness or released with kindness.”’ (2: 229)

A fatwa by Shaikh Abd al-Azeez ibn Baz also considers such a marriage forbidden. It says: ‘There are relationships that are at variance with legitimate marriage. One of these is *mit[ah* marriage, which entails that the marriage is intended to last for a specific period and is terminated at the end of this period. The man may under such an arrangement marry the woman for one, two or three months or any other period the two may agree. Such *mit[ah* marriage was permitted under Islam for a short while, but the permission was subsequently abrogated when God made it forbidden. An authentic *hadith* quotes the Prophet as saying: “I had permitted temporary marriage, but now God has forbidden this until the Day of Judgement. Whoever has a woman on these terms must let her free, but do not take back any part of what you have given them in dowry.” It is confirmed in *hadiths* reported by [Ali, Salamah ibn al-Akwa[, Ibn Mas[ud and others that the Prophet prohibited *mit[ah* marriage, and this is the final verdict in Islamic law, making it absolutely forbidden. A legitimate marriage is the one in which a man desires to marry a woman and there is no time limit for such a marriage. It takes place because of genuine willingness to marry.’[66]

Shaikh Abdullah ibn Zayd al-Mahmood also discussed *mit[ah* marriage and concluded that it is invalid. He said: ‘*Mit[ah* marriage is a type of taking a mistress, who is then attached to one man for a specific period of time. It is often done by many adulterer women who wish to cover up their relationships. God says in the Qur’an: “Marry them, then, with their people’s consent and give them their dowries in an equitable manner, as chaste women who give themselves in honest wedlock, not in fornication, nor as women who have secret love companions.” (4: 25) He also says: “[Lawful to you also are] the virtuous women from among the believers and the virtuous women from among those who were given revelations before you [are also lawful to you] when you give them their dowries, taking them in honest wedlock, not in fornication, nor as mistresses.”’ (5: 5)

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[66] Collected Fatawa and articles by Shaikh Ibn Baz, vol. 20, p. 274.

The Islamic *Fiqh* Council of the Muslim World League discussed the question of New Forms of Marriage Contracts in its eighteenth session held in Makkah, 10–14 Rabi[I 1427 AH, 2006. It discussed ‘marriage until childbirth’ and stated that it is a marriage contract that fulfils all requirements, but one of the two parties includes in the contract a condition that the marriage is automatically terminated, or the woman is divorced, if she gives birth to a child. Such a marriage is invalid because to assign a time limit to the marriage, whether specified such as one month, or unspecified such as childbirth, makes it a *mit[ah* marriage, which is unanimously agreed to be unlawful.

Another fatwa by contemporary scholars was issued by Professor Wahbah al-Zuhayli and published on his website.[67] He says: ‘All four schools of Islamic jurisprudence and the great majority of the Prophet’s companions agree that *mit[ah* and similar marriages are invalid. When God mentions pleasure and enjoyment with regard to the relation between men and women, this is a reference to marriage, as in the verse that says: “To those with whom you seek to enjoy marriage, you shall give the dowries due to them.” (4: 24) This verse occurs in the context of marriage, as this is clear in the previous and following verses. Two verses earlier, God says: “Do not marry women whom your fathers have previously married, unless it be a thing of the past. Surely, that is an indecent, abominable and evil practice.” (4: 22) And in the following verse, He says: “Any of you who, owing to circumstances, is not in a position to marry a free believing woman may marry a believing maiden from among those whom your right hands possess. God knows all about your faith: you belong to one another. Marry them, then, with their people’s consent and give them their dowries in an equitable manner, as chaste women who give themselves in honest wedlock, not in fornication, nor as women who have secret love companions.” (4: 25) It is clear that whatever enjoyment is sought must be through proper marriage, not through a *mit[ah* marriage, which is clearly forbidden in Islam. This is further clarified by the mention of dowry, which is paid by the man to the woman as an essential requirement of a valid marriage contract. This is also clear in the verse that addresses the Prophet: "Prophet! We have made lawful to you the wives whom you have paid their dowries."' (33: 50)

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[67] www.fikr.com/zuhayli/index.php

The permission of *mit[ah* marriage during some expeditions during the Prophet's lifetime was given in particularly difficult circumstances. This was later changed as the Prophet made clear that *mit[ah* marriage is forbidden forever. Numerous *hadiths* make this absolutely clear.

Sources

- Ali ibn Nayef al-Shahhood, *Al-Khulasah fi Fiqh al-Aqaliyyat*, 1 and 9, vol. 1, p. 335.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Islam Question and Answer: www.islamQA.info.
- Decisions of the Islamic *Fiqh* Council.
- Prof. Zuhayli's website: www.fikr.com/zuhayli/index.php.

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31. MARRIAGE DURING A PERIOD OF STUDY

Similar Questions

- Marriage with the intention to divorce;
- Marriage for a period of travel;
- Concealment of the intention to divorce at the time of marriage.

The Issue

A man may marry a woman without informing her that he intends to divorce her after a period of time. In most cases, this type of marraige applies to students pursuing their studies abroad. A student feels the pressure of temptation and fears he will slip into sin. He, therefore, marries a woman for the period of his studies and when he has completed his business or course, he leaves and divorces his wife.

Ruling

Both modern scholars and scholars of olden days have differed on the status of marriage with the intention to divorce. Those who permit it look at the formalities and consider that:

1. The marraige contract meets all the conditions and requirements and as such it is valid. The man's intention is of no consequence.
2. There is a clear need.
3. It is different from *mit[ah*, which is marriage for a specified period.

Scholars who prohibit this type of marriage consider the following points:

1. It is a device to legitimize *mit[ah*.
2. It involves cheating.
3. It tarnishes the image of Islam.

What Scholars Say

The first view: This is a valid marriage provided no time limit is placed on it. The leading scholars who advocated this view include:

1. Shaikh Abd al-Azeez ibn Baz was given the following question: ‘I am a Syrian national employed in Riyadh, Saudi Arabia. I would like to get married, intending to divorce later. What is the Islamic ruling on this type of marriage? My intention is that when my contract of employment in the Kingdom is terminated, I will divorce my wife and leave.’ He gave the following answer.

This is a controversial question. The majority of scholars permit this type of marriage because the man’s intention is secret, with no condition to this effect stipulated between the man and the wife or her family. As such, it does not count as a *mit[ah*. On the contrary, according to the majority of scholars it is a legitimate marriage and the fact that the man intends to divorce his wife in the future, when he leaves the country or for some other reason, does not affect its validity. Divorce is permissible when the need arises, provided that it is not a condition of the marriage. If the marriage stipulates a condition to divorce after a particular period of time, a month, two months, a year, etc. or if it is agreed between the parties, then it becomes a *mit[ah*, which is forbidden. As long as the intention remains internal with the man, known only to himself and to God, with no condition made between the man and the other party, the marriage is valid.

Shaikh Ibn Baz also said: Scholars have different views with regard to marriage with the intention to divorce. Some, like al-Awza[i, disapprove of it, saying that it is akin to *mit[ah*. Hence, they say that it is not permissible for a man to marry with the intention to divorce. Ibn Qudamah states in *Al-Mughni* that the majority of scholars maintain that it is a valid marriage as long as the intention is not made a condition, but remains internal known to the man and God only. This is the case of someone who travels abroad to study or for some other business and fears that he may slip into sin. He may get married even though he intends to divorce when his business is completed.

2. The Permanent Committee of Research and Fatwa

The Committee, headed by Shaikh Abd al-Azeez ibn Baz, ruled that this marriage is valid.

3. Shaikh Ibn Jibreen

This question is about marriage with the intention to divorce. Many scholars have ruled it invalid, considering it like the *mit[ah* which is forbidden according to all Sunni scholars. These scholars have said that to permit such a marriage may lead to transgression of the bounds set by Islamic law. A person who resorts to such a marriage may have at one time more than four wives, some of whom may be in their waiting period and some may be married normally, or according to this arrangement.

However, many scholars also permit this type of marriage, provided that all conditions of marriage are met and there is no other reason to prevent it. The man must pay the woman her dowry in full, and must not specify a period of time for the marriage. Moreover, the woman must not come under any compulsion to agree, either by the man or by her guardian. If all these conditions are met, then this marriage is permissible. It may be that the man intends to test the marriage, or perhaps he wants to guard against slipping into sin. After all, divorce is permissible to him. On the other hand, he may feel that she is suitable for him and when he goes home he will take her with him.

Perhaps Shaikh Faisal Mawlawi was referring to this method, i.e. marriage with the intention to divorce, as a practical way that is better than *mit[ah*. He said: ‘There is no need for the *mit[ah* marriage in our Islamic jurisprudence, because marriage is meant to be for life and divorce is easy. If a Muslim marries a woman intending the marriage to be for a period and their relationship goes smoothly, he can make it permanent. On the other hand, if the marriage is a permanent one and he discovers after a short period that they cannot live happily together, he can divorce her [...] . So, what need is there for specifying a term for the marriage since the possibility of divorce exists even before the specified term has lapsed?’

Although this type of marriage is similar to *mit[ah* as practised by the Shia, in as much as it is intended to be for a period, this is not provided for in the marriage contract. It is merely an intention. To terminate this marriage, the husband must pronounce the word of divorce, and the woman is entitled to her maintenance and inheritance on the same lines as any permanent marriage. As such it is different from *mit[ah*.

The second view: This type of marriage is forbidden. The leading scholars sharing this view include:

1. The late Shaikh Muhammad ibn Uthaymeen

A question was put to him: ‘A young man wants to travel abroad on a scholarship of study. He wishes to maintain his chastity by marrying a national of the country where he is studying, then to divorce her. He will not inform her of his intention to divorce. What is the Islamic ruling?’ His answer was as follows:

‘This marriage with the intention to divorce can have one of two alternatives. The marriage contract stipulates that it is a marriage for a specific period, such as a month, a year, or for the duration of his studies, which means that it is a *mit[ah* marriage and that is forbidden. Alternatively, the man intends it as a provisional marriage without making it a condition. The best known view in the Hanbali school of *Fiqh* isthis is forbidden and the marriage contract is flawed. They say that what is intended has the same status as a stipulated condition. This is based on the Prophet’s *hadith*: ‘Actions are but by intentions; and everyone shall have but what he has intended.’ [Related by al-Bukhari, *hadith* No. 1] The other view expressed by scholars on this question is that it is permissible for a man to marry, intending to divorce his wife when he leaves the country. This is one of two views expressed by Shaikh al-Islam Ibn Taymiyyah.

My own view is that this marriage is sound, not a *mit[ah* marriage, as it does not meet the definition of *mit[ah*. However, it is forbidden because it involves cheating the wife and her family and the Prophet has forbidden all cheating. Neither the woman nor her family will agree to such a marriage if they know in advance that the man only wants to marry her for a period. He himself would not agree that his daughter marries a man who intends to divorce her once his need of her is over so how can he treat other people in a way that he does not accept for himself? This is contrary to the true faith. The Prophet says: 'None of you truly believes unless he wishes for his brother what he wishes for himself.' [Related by al-Bukhari, *hadith* Nos 6 and 13]

I also heard that some people are using this view as justification of a practice no scholar would sanction. They travel abroad for such a marriage, intending the marriage to be temporary and staying with their wife for whatever period they want, then divorce her and come back. This is very serious and strictly forbidden. It is, therefore, better to prohibit marriage with the intention to divorce outright because it involves cheating and deception, in addition to facilitating such a forbidden practice. Most people have little knowledge of what Islam allows, and it is often the case that desire leads people to transgress the bounds set by God.'[68]

2. The Islamic *Fiqh* Council at the Muslim World League

The Islamic *Fiqh* Council at the Muslim World League considered the question of 'New Forms of Marriage Contracts', and marriage with the intention to divorce. This is a marriage that meets the conditions and requirements of marriage, but the husband has the intention of divorcing his wife after a period known to him, such as ten days, or unknown to him such as the completion of his studies or his business.

Although some scholars consider this type of marriage permissible, the Council is of the view that it is forbidden because it involves cheating and deception. Had the woman or her guardian known the man's intention, they would not agree to the marriage. Moreover, it leads to many adverse consequences that tarnish the image of the Muslim community.

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[68] M. Ibn Uthaimeen, *Fatawa al-Mar'ah al-Muslimah*, vol. 2, pp. 757–8.

4. The Secretary of the Assembly of Muslim Jurists of America

Marriage is a contract that assumes a permanent relationship between the married couple. If the element of a specific duration is involved, the contract is rendered flawed. If the duration is specified, it becomes a *mit[ah* marriage, which is invalid according to all Sunni schools of *Fiqh*. If the husband does not declare his intention to divorce his wife after a period, it is considered a *mit[ah* marriage by the Hanbali school of *Fiqh*.

The majority of scholars do not consider the contract flawed by such an intention, because the intention may change. Contracts are rendered invalid on the basis of the conditions they stipulate, not the intentions of the parties. Some scholars are of the view that the contract is valid but the cheating husband commits a serious sin of deception, for having an intention which would make the other party refuse the marriage had they known of it. Perhaps this view is the best.[69]

Sources

- Fatawa by the Islamic *Fiqh* Council.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Abd al-Azeez ibn Baz, *Fatawa*.
- Husam Affanah, *Fatawa*.

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[69] The Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.

32. MARRIAGE IN A CHURCH

Similar Questions

- Marriage officiated by a priest;
- A non-Muslim dictating the marriage formula.

The Issue

A Muslim wants to marry a Christian woman who wishes to retain her faith. She takes him to her church where a priest will perform the marriage. What is the situation regarding this marriage if both parties are Muslims?

Ruling

Scholars do not consider it permissible for a Christian priest to perform the marriage of a Muslim. Their ruling is based on the verse that says: 'Never will God allow the unbelievers a way [of mastery] over the believers.' (4: 141) It is clearly established that an unbeliever cannot have authority over a believer.

The Permanent Committee for Research and Fatwa issued a fatwa[70] stating: 'The Committee received a question asking whether a Muslim may marry a Christian woman at a church, with a priest performing the marriage, after the marriage has been already performed according to the Islamic way and registered at the British General Registry Office of Births and Marriages?

'In answer, the Committee states that it is unlawful for a Muslim to marry a Muslim or a Christian woman in a church or by a priest, even after he has married her according to the Islamic way. To do so is to uphold the Christian traditions of marriage, honour their rituals and places of worship and venerate their clerics and worshippers. The Prophet says: “Whoever behaves like a particular community belongs to it.” (Related by Ahmad with a reliable chain of transmission)

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[70] Fatwa No. 1,113, published in *Majallat al-Buhuth al-Islamiyyah*, No. 9, p. 48.

‘As for a Muslim entering a church, the Permanent Committee for Research and Fatwa rules that this is forbidden. Under the Presidency of Shaikh Abd al-Azeez ibn Baz, the Committee stated: “It is not permissible for a Muslim to join the unbelievers in their places of worship, as this increases their numbers. Al-Bayhaqi reports with a reliable chain of transmission [Umar’s order: ‘Do not join the unbelievers in their churches and temples, as God’s anger befalls them.’ However, if one goes there for a legitimate reason, or to tell them about Islam and call on them to believe in God’s oneness, this is appropriate.”’

The Egyptian Dar al-Ifta issued a fatwa by Shaikh Muhammad Khatir, the former Mufti of Egypt, dated 5 February 1978, stating that: ‘If the marriage between a Muslim man and a Christian woman is performed according to the civil procedure, with a commitment and acceptance, and in the presence of two Muslim witnesses, the marriage is appropriate and valid. As for performing the marriage in a church, it is well known that a church only performs the marriages of Christians of its own denomination. It is therefore unlawful for a Muslim to perform his marriage there.’

A fatwa by the Assembly of Muslim Jurists states: ‘It is wrong for a man who believes in God and the Last Day to perform his marriage in a church because such a marriage will not be in accordance with Islamic law but according to the practices of unbelievers. Such a person must not be helped to do so, and Muslims must not attend his marriage if it is performed in this way. It is their duty to advise him against it. If he rejects their advice, he should be left alone so as to persuade him and others to change.’

The European Council for Fatwa and Research said in its fatwa that performing marriage in a church is reprehensible from the Islamic point of view. It is forbidden if it includes participation in their religious rituals or if the marriage involves something of which Islam disapproves, such as adding a condition that the children born in such a marriage will not be brought up as Muslims. Nevertheless the marriage is valid if it fulfils the Islamic requirements. All the conditions of the marriage will then be upheld. However, if a Muslim has to go through this he should take the precaution of performing the marriage contract again somewhere else to ensure publicity of the marriage among Muslims.

The Council strongly advises young Muslims not to commit such an action, which suggests that a husband will try to please his wife even though his action would incur God's displeasure. It also exposes himself to the risk of allowing his children to be brought up as non-Muslims.

The late Shaikh Atiyyah Saqr also issued a fatwa saying: 'If a Muslim man marries a Christian woman according to the civil procedure, with commitment and acceptance and in the presence of two Muslim witnesses, the marriage is proper and valid from the Islamic point of view. To perform the marriage in a church according to the Christian tradition makes the marriage invalid. If people need to perform the marriage in a church, let this be after the marriage has been performed elsewhere according to the Islamic way, or else after the church rituals have been completed. If the marriage is performed away from the church, there is no need to go there and perform the marriage again.'[71]

Sources

- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- Abd al-Azeez ibn Baz, *Fatawa*.
- Atiyyah Saqr, *Al-Fatawa al-Islamiyyah*, vol. 5.
- Fatawa by the Egyptian Dar al-Ifta.
- *Majallat al-Buhuth al-Islamiyyah*.

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[71] A. Saqr, *Al-Fatawa al-Islamiyyah*, vol. 5, p. 1,927.

33. PERFORMING MARRIAGE AT ISLAMIC CENTRES

Similar Questions

- Can Islamic centres perform marriage?
- Marriage at Islamic centres;
- Marriage performed at an Islamic centre.

The Issue

An Islamic centre functioning in a Western country performs a marriage contract following the Islamic method and in the presence of witnesses, making sure that it is properly done.

Ruling

If both parties are Muslims, or if the man is a Muslim and the woman belongs to a divine religion, they may have their marriage performed in an Islamic centre according to Islamic law. The entry of the marriage in the centre's records is considered a proper document of the marriage and its conditions. All this is considered good publicity and there is no disagreement about this.

Jurisdiction of the Islamic centre

May we consider an Islamic centre to act as guardian for a Muslim woman who is without a guardian and assume this task in her marriage contract? Contemporary scholars are of two different views:

The first view sees that an Islamic centre has a judicial role which puts it in a similar position to that of a judge in Muslim countries. As such, it has the right to act for a Muslim woman who appoints it as her guardian and asks it to act for her in her marriage. This ruling is given by the Assembly of Muslim Jurists of America.[72]

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[72] The Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.

The second view considers that it is not permissible for the Director of an Islamic centre or its Board of Directors or Trustees to act as the woman's guardian. Only a woman's own guardian or a Muslim judge can undertake this role.

Evidence

It is stated on the Islam Question and Answer website (www.islamqa.info) that in marriage certain essentials and conditions must be fulfilled for the marriage to be correct and valid. The essential requirement is the commitment and acceptance. The commitment takes place when the woman's guardian says to her suitor: 'I give you my daughter, sister, or this woman [mentioning her name] in marriage.' The acceptance is when the suitor says: 'I accept to marry this woman [naming her]' The conditions of the marriage include the identification of both spouses and their willing acceptance of the marriage, as well as it being undertaken by the woman's guardian or his attorney and the presence of two Muslim men of integrity as witnesses. The Prophet says: 'No marriage may take place without a guardian.'[73] Some scholars are of the view that if the marriage is publicized, the publicity is considered as substitute for the presence of witnesses.

A civil marriage that takes place in a court of law or a Registrar's office is appropriate if it is intended to document and register the marriage. It is certain to prevent foul play and ensure the rights of both parties. On the other hand, if such a civil marriage does not fulfil the conditions of the marriage, or if it allows for Islamically unacceptable procedures concerning divorce and other matters, it must not be done – unless the marriage cannot be documented without it or it is a matter of necessity. In such cases, the marriage should be performed properly in an Islamic centre, then the civil marriage conducted in the court, with the two parties clearly intending to settle any future dispute according to Islam and disregarding the unacceptable rituals that attend a marriage in some countries. Muslims living in the West should endeavour to reach a situation whereby marriage is properly officiated in Islamic centres without the need to resort to a Registrar's office.

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[73] Related by Abu Dawud, *hadith* No. 2,085; al-Tirmidhi, *hadith* No. 1,101; Ibn Majah, *hadith* No. 1,881 on the authority of Abu Musa al-Ash[ari. It is graded as authentic by al-Albani. The *hadith* is also related by al-Bayhaqi on the authority of [Imran and [A'ishah as: 'No marriage may take place without a guardian and two reliable witnesses.'

Another fatwa published on the same website says: 'In short, it is not right that the Director of an Islamic centre should hasten to conduct the marriage of a woman under the pretext that her guardian refuses to act for her. He should ask her guardian and ascertain the reason for his refusal. If the Director realizes that her guardian has a valid reason, he may not marry her. On the other hand, if the Director concludes that the guardian has no valid reason, and the woman has no other guardian, he may act for her in marriage, particularly if her guardian repeatedly refuses to act for her.'

Sources

- Islam Question and Answer: www.islamQA.info.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- The Message of Islam website: www.islammessage.com.

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34. DOCUMENTING A CIVIL MARRIAGE IN NON-ISLAMIC COURTS

Similar Questions

- Performing marriage in a court of law in non-Muslim countries.

The Issue

Is it appropriate for the two parties of a marriage to go to a civil authority where a non-Muslim official performs the marriage contract between them fulfilling certain conditions?

Ruling

If the purpose is to document and register the marriage contract with the civil authority and preserve it in the records of the country, then it is perfectly appropriate. However, if the purpose is to initiate a marriage contract that establishes the marital relationship, then contemporary scholars have two different views.

The first view considers such a contract invalid. This is the view of the Assembly of Muslim Jurists of America. The Assembly published on its website a statement issued at the conclusion of its second convention, which it held in collaboration with the Muslim Association in Denmark 4–7 Jumada I 1425 AH, 22–25 June 2004. The statement made clear that a civil marriage conducted by American officials does not fulfil some of the essentials and conditions of Islamic marriage and this makes it invalid. However, if it takes place, is publicized and is free of any aspect that prevents such a marriage from the Islamic point of view, then it acquires all the conditions that are attendant on a proper Islamic marriage, though it is considered a marriage with suspected flaws. Therefore, it should be reconfirmed by a further Islamic marriage contract in order to complete its essentials and conditions.

Dr Salim ibn Abd al-Ghani al-Rafie says in his book, *Ahkam al-Ahwal al-Shakhsiyyah lil-Muslimin fi al-Gharb* (Rules of Personal and Family Law for Muslims in the West): 'Civil marriage is a flawed contract that does not make the marital relation lawful, an Islamic marriage contract is necessary for that. Once such a contract is made it can be followed by a civil marriage, not for the legalization of marital relations but to safeguard the rights of both parties, since some governments do not uphold any contract other than such civil marriage. What is important is to avoid the wrongs that such civil marriages cause when the two parties do not abide by Islamic rules. If a couple go through a civil marriage and consummate the marriage without having had an Islamic marriage contract, they commit a sin. They must immediately perform an Islamic marriage contract. Although sexual intercourse before performing the Islamic marriage is forbidden, it is not considered adultery and any children born as a result are not illegitimate. The civil marriage is not considered an invalid marriage; rather, it is a flawed one.'

In conclusion, scholars who share this view argue that civil marriages do not fulfil some of the essentials and conditions of Islamic marriage.

The second view approves civil marriage and considers it valid. Scholars who share this view base their argument on the fact that the contract aims at consolidating and documenting the marriage, and this is achieved through the civil courts or other appropriate government departments. If witnesses and the woman's guardian are not present, the marriage contract is still valid. The presence of witnesses is required to ensure the publicity of the marriage. The presence of the guardian is a matter over which scholars differ. The Hanafi school of Islamic law does not make the guardian's role a condition for the validity of the marriage.

The late Shaikh Faisal Mawlawi, former Deputy Chairman of the European Council for Fatwa and Research, issued a fatwa that said:

A legal marriage performed in any non-Muslim country is a lawful marriage from the Islamic point of view if it is between spouses who are not precluded from marrying each other for any Islamic reason.

The first and most importantaspect of Islamic marriage, and indeed any other legal marriage contract, is commitment and acceptance by the two parties. This is fulfilled in a civil marriage contract, which normally fulfils the publicity condition as well.

The condition of the presence of two witnesses is considered by some schools of Islamic law to ensure the publicity of the marriage, and this condition is ensured by the legal civil marriage. The other condition, of the agreement of the woman's guardian, is not unanimously required by all schools of Islamic law. However, if the guardian is present and gives his consent the legality of this marriage is further confirmed.

The only point that may make the European civil marriage unlawful is that it does not consider some aspects that may make a marriage unlawful from the Islamic point of view. For example, under Islam a man may not marry a woman if both of them were breastfed by the same woman when they were under two years of age, because they are considered a brother and sister through such breastfeeding. Under the laws of European countries, such a marriage is acceptable. However, should it take place, the marriage cannot be considered Islamically lawful. Therefore, if a civil marriage takes place between a man and a woman with no Islamic restriction on their marriage it is considered a legitimate marriage and religious courts in our Muslim countries should accept it as valid. Moreover, marital relations, including intercourse, between the couple is perfectly lawful. However, if there is an Islamic restriction that prevents such a marriage, then sexual intercourse is forbidden to them. Hence, the civil marriage may replace the Islamic marriage contract when there is no reason to prevent it from the Islamic point of view.

While a civil marriage in a European country is particularly desirable if both partners hold a European nationality, if either or both of them are nationals of a Muslim country, then they should conduct their marriage in that Muslim country. This will ensure that they are subject to the Islamic laws and regulations that apply to marriage and what it entails, including the rules concerning divorce, custody of children, inheritance, etc.

If one or both of the couple hold the nationality of a Muslim country and they perform their marriage under European law, their marriage is valid from the Islamic point of view and their marital relationship is lawful. However, they are held accountable for agreeing to place their marriage under a non-Islamic law when they could have placed it under Islamic law.[74]

Sources

- Ali ibn Nayef al-Shahhood, *Al-Khulasah fi Fiqh al-Aqaliyyat*
- Islam Question and Answer: www.islamQA.info.
- Islamway.net: www.islamway.net.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- www.shubily.com.
- OnIslam.net website: www.onislam.net.
- Salim ibn Abd al-Ghani al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*.

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[74] www.onislam.net/arabic/ask-the-scholar

35. MARRIAGE WITH ISLAMIC AND CIVIL CONTRACTS

Similar Questions

- Confirming marriage at an Islamic centre and a court of law;
- Performing a marriage contract for the second time.

The Issue

A couple perform their marriage at an Islamic centre, then they confirm their marriage at the relevant government department.

Ruling

There is no harm in reconfirming the marriage at a court of law or a Registrar's office after the marriage has been conducted at an Islamic centre. Indeed, a number of scholars recommend that in order to safeguard the rights of both parties, the couple should not perform their marriage only at the Islamic centre because the national courts may not recognize such a marriage. These scholars also recommend that the two contracts should specify the same conditions, as a precaution against future disputes. This ruling is endorsed by several authorities, including:

In Decision 4/20 concerning 'traditional marriage', the European Council for Fatwa and Researchsays:

Having reviewed and discussed the question of traditional marriage the Council decides:

First, traditional marriage means a marriage contract that fulfils all the essentials and conditions required in such contracts but is not documented or recorded by any official authority.

Secondly, the Council recommends that neither the traditional marriage nor the civil marriage is sufficient on its own, but both need to be performed. Performing just the traditional marriage may lead to some rights being lost due to the lack of registration and documentation of the marriage. On the other hand, civil marriage includes some disagreements with Islamic essentials and conditions and it may contain conditions that are contrary to Islamic law.

Thirdly, having both traditional and civil contracts, without reconciling their effects and rules, may also create problems and in the case of any dispute, people may wish to apply one contract or the other. Therefore, the Council suggests that a committee of Islamic scholars and legal experts should draft a document to be attached to the civil contract.

The Assembly of Muslim Jurists of America said in its final statement following its second conference, held in collaboration with the Muslim Association in Copenhagen, Denmark in 2004: 'the civil marriage conducted by American official authorities does not fulfil some of the essentials and conditions of Islamic marriage. As such, it is invalid. However, if it takes place and is publicized, and is free of any aspect that prevents such a marriage from the Islamic point of view, it acquires all the results that are attendant on a proper Islamic marriage, because it is considered then a marriage with suspected flaws. Therefore, it should be reconfirmed by a further Islamic marriage contract in order to complete its essentials and conditions.'

Sources

- Islam Question and Answer: www.islamQA.info.
- Salim ibn Abd al-Ghani al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- www.shubily.com.

36. POLYGAMY IN COUNTRIES WITH MUSLIM MINORITIES

Similar Questions

- To have four wives.

The Issue

The laws of Western countries disallow polygamy, and in some countries there are groups and organizations that advocate banning bigamy, which they claim is contrary to human rights. What is the status for Muslims who live in such countries under such laws?

Ruling

Islam allows polygamy with a maximum of four wives, making it conditional on maintaining fairness between one's wives. Such marriages are subject to all other conditions of marriage, including the man's ability to fulfil all the requirements and duties of marriage. The permission is stated in the Qur'anic verse: 'You may marry of other women as may be agreeable to you, two or three or four. But if you fear that you will not be able to maintain fairness between them, then marry only one, or those whom your right hands possess. That makes it more likely that you will not do injustice.' (4: 3)

This ruling is endorsed by several authorities including:

1. The European Council for Fatwa and Research said: Prior to Islam, men could marry any number of women, without any restriction. Islam regulated it, establishing a limit of the number of wives and putting a condition in place. The limit restricts polygamy to four wives, with no possibility of increasing the number. God says: 'You may marry of other women as may be agreeable to you, two or three or four. But if you fear that you will not be able to maintain fairness between them, then marry only one, or those whom your right hands possess. That

> makes it more likely that you will not do injustice.' (4: 3) When a man from the Thaqif tribe embraced Islam and he was married to ten wives, the Prophet ordered him to retain four of them and divorce the rest. The condition requires the man who wants to marry more than one wife should be confident that he can maintain fairness between his wives. If he is unsure, then he may not have a second wife, as God says: 'But if you fear that you will not be able to maintain fairness between them, then marry only one.' (4: 3) This condition is added to the other conditions that must be fulfilled in any marriage, such as the ability to look after one's wife, or wives, financially and help them to maintain their chastity.

Islam permits polygamy because it is a practical religion which does not base its rules on unrealistic ideals. It provides solutions to life's problems and a second marriage may provide a good solution for the husband if his first wife cannot give him a child, or has a long monthly period and his sexual desire is too strong. His wife may be suffering from a chronic illness and he wishes to keep rather than divorce her, etc. Polygamy may also provide a good solution for some women, such as a widow or a young divorcee who is unlikely to find a young single man willing to marry her, particularly if she has children to look after.

Legal polygamy may provide a solution for society, for example when the number of women is disproportionately greater than the number of men who are able to get married. This is not an uncommon situation, and the problem certainly increases after wars. But what is society to do in order to sort out this problem? There are only three alternatives: (i) Leaving a large number of women as spinsters, with little hope of marriage and motherhood. Needless to say, this is unfair; (ii) Fulfiling their desires through illegitimate means, incurring grave sin; or (iii) Allowing them to marry men who have other wives but are able to look after them, providing them with suitable homes and marital life and maintaining fairness between their wives. This last option provides the proper solution.

Voices are raised against this solution protesting that it is open to abuse. In life many rights are abused or trampled upon, but they are not cancelled as a result. A first marriage is often abused. Personal freedom, democratic elections and authority are often abused. Are we to cancel these as a result and let life go into chaos? When a certain right is abused, what is needed is to put in place proper controls and punish those who abuse their rights as far as this is feasible.[75]

2. The International Islamic *Fiqh* Academy of the Organization of Islamic Cooperation said in its decision[76] that polygamy based on fairness between wives is not considered from the Islamic perspective an act of violence or an act of discrimination.
3. One of the fatwas of contemporary scholars was that issued by the late Shaikh Abd al-Azeez ibn Baz who said: ‘The Qur’an, God’s glorious book, and the Prophet’s Sunnah permit polygamy, which is lawful according to the unanimous view of all Muslims. God says: “You may marry of other women as may be agreeable to you, two or three or four. But if you fear that you will not be able to maintain fairness between them, then marry only one, or those whom your right hands possess. That makes it more likely that you will not do injustice.” (4: 3) The Prophet himself married nine wives who all lived with him. They were a great benefit to the Muslim community, transmitting useful knowledge, great values and fine manners. The same was the case with the two noble prophets, David and Solomon, each of whom was married, by God’s permission, to a large number of women. Many of the Prophet’s companions and their good successors also married more than one wife.’

Polygamy was a common practice in civilized nations of the past and among the Arabs before Islam. Islam has limited polygamy, setting a maximum of four wives, but God permitted the Prophet more than that to allow for certain benefits. Permitting polygamy, with the condition of endeavouring to maintain strict fairness between one's wives, serves various interests and brings about many benefits, such as maintaining the chastity of the husband who can help more than one woman to do the same, and having many children, which increases the population of the nation of believers and strengthens it. Another benefit is looking after many women financially. Thus the Prophet will be able to take pride in his community and its numbers on the Day of Judgement. Other interests and benefits can be identified by anyone who looks at Islamic law with respect and studies its different aspects that combine beautiful suitability with wisdom. Such a person will quickly realize that mankind always needs Islamic law. On the other hand, a hostile or ignorant person will cast a negative view upon Islamic law while admiring all that comes from the West or the East. Such a person cannot see the great benefits of Islamic law and how it serves the interests of both men and women.

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[75] Decision 4/4 of the European Council for Fatwa and Research.

[76] The decision was adopted in the Assembly’s nineteenth session held in the UAE, 1–5 Jumada I 1430 AH, 26–30 April 2009.

Muslim scholars say that the permission of polygamy is one of the great aspects of Islamic law as it provides an excellent solution for some important problems in human society. A number of non-Muslims have recognized this and acknowledged the superiority of Islamic law in this respect, despite the fact that they are generally opposed to Islam and its laws.[77]

4. The Permanent Committee for Research and Fatwa said in its fatwa: 'Polygamy is permissible for a man who is able to look after his wives, does not fear to be unjust to any of them and who divides his nights equally between them. Anyone who advises against polygamy and says that he or anyone else is better off without it, even if this leads to adultery, is wrong. He commits a sin by saying

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[77] The collected fatwas and articles of Shaikh Ibn Baz, vol. 21, p. 240.

this or giving others such advice. He must repent, seek God's forgiveness and renounce such a view.'[78]

5. The late Shaikh Atiyyah Saqr said in his fatwa: 'God says in the Qur'an: "You may marry of other women as may be agreeable to you, two or three or four." (4: 3) Polygamy was widely practised under human laws and divine religions. Islam approved of it, limiting it to four wives and placing a condition that the man must maintain strict fairness between his wives. It is certainly beneficial to make it lawful.'

Sources

- The European Council for Fatwa and Research.
- The International Islamic Fiqh Academy.
- The collected fatwas and articles of Shaikh Ibn Baz.
- *Majallat al-Buhuth al-Islamiyyah*.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Atiyyah Saqr, *Al-Fatawa al-Islamiyyah*.

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[78] Fatawa by the Permanent Committee for Research and Fatwa, No. 8,774, vol. 19, p. 189.

37. MARRYING ONE'S PARTNER IN ADULTERY

Similar Questions

- Marriage between adulterers';
- Marrying a pregnant adulteress.

The Issue

A man and a woman may commit adultery and then wish to put their relationship on the right basis through marriage. It is not infrequent that a man living in the West goes to an Islamic centre accompanied by a pregnant woman. The pregnancy may be by him or someone else, or she may not be pregnant but the two had committed adultery. He declares that he wishes to marry her.

Ruling

There are two issues in this question. The first is marrying a pregnant adulteress. Scholars differ on this issue with **the first view** permitting such a marriage. Contemporary authorities that advocate this view include:

The European Council for Fatwa and Research. Its decision says: If the two adulterers repent and want to desert the illegitimate relationship in favour of one which is lawful and abandon their sinful past, their marriage is universally agreed to be lawful. The majority of scholars do not make repentance a condition for the legality of marrying an adulteress. It is reported that [Umar administered the punishment of adultery on a man and a woman and was keen to get them married.[79]

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[79] This is related by al-Shafi[i in *Al-Umm*, vol. 10, p. 38: 'A man married a woman who had a daughter born in a previous marriage, while he had a son by another wife. The boy fornicated with the girl and she was soon pregnant. When [Umar came to Makkah, the case was presented to him. He questioned the boy and the girl and they confessed to their sin. [Umar enforced the mandatory punishment of flogging and was keen to get them married, but the boy refused to marry the girl.' This *hadith* is graded as 'Good'.

Only the Hanbali school of Islamic law makes repentance by the adulterer a condition for the validity of their marriage. They cite in support the Qur'anic verse: 'The adulterer couples with none other than an adulteress or an idolatress; and with the adulteress couples none other than an adulterer or an idolater. This is forbidden to the believers.' (24: 3)

Scholars have different views on whether an adulteress needs to observe a waiting period before she can be married. We are in support of the view of the Hanafi and al-Shafi[i schools of Islamic law as well as al-Thawri. They maintain that an adulteress need not observe any waiting period, even though she may be pregnant. This view is reported to have been endorsed by three of the four rightly-guided Caliphs, Abu Bakr, [Umar and [Ali.[80] They cite in support an authentic *hadith* that says: 'The child belongs to the marriage bed while the adulterer bites the dust.' (Related by al-Bukhari, *hadith* No. 1,948; Muslim, *hadith* No. 1,457). The *hadith* means that if a married woman gets pregnant through adultery, the child belongs to her husband while her partner in adultery has no claim to the child. The waiting period is required to ensure that the woman is not pregnant, so that the child belongs to its real father. In the case of adultery, this does not apply, and therefore no waiting period is required.

If a man marries a woman who is pregnant through adultery with another man, their marriage is valid according to the Hanafi school, but he may not have intercourse with her until she has given birth. This is based on the *hadith* that says: 'It is not permissible for a believer in God and the Last Day to irrigate someone else's seed with his own water.'[81] If the pregnancy is by the husband but before their marriage, the marriage is valid according to the Hanafi school and other scholars, and they are all in agreement that intercourse between them is permissible.[82]

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[80] This is reported by Muhammad ibn al-Hasan al-Shaybani, a leading scholar of the Hanafi school, in his book *Al-Hujjah [ala Ahl al-Madinah*, vol. 3, p. 388, attributing it to Abu Bakr and [Umar. Its import is also reported by al-Bayhaqi, a leading scholar of the Shafi[i school, in his *Al-Sunan*, vol. 7, p. 155. It is related by Ibn Hazm in his *Al-Muhalla*, vol. 9, p. 476, attributed to Abu Bakr and [Umar. He also gives a similar report of [Umar, vol. 10, p. 28.

[81] Related by Ahmad, *hadith* No. 28/207; Abu Dawud, *hadith* Nos 2,158 and 2,159; al-Bayhaqi, vol. 7, p. 449 and vol. 9, p. 124.

The Assembly of Muslim Jurists of America said in its final statement at the end of its second convention in Copenhagen, 2004: 'The Assembly chooses the view that the marriage of an adulterer with the woman who was his partner in adultery is valid. It fulfils the Islamic objective of no publicity of adultery. Moreover, it encourages such adulterers to repent of their sin and mend their ways. As for affiliating the child to the man who committed adultery with its mother, the Assembly takes a provisional decision that it is permissible to affiliate the child to the adulterer outside Muslim countries, if he claims it and the mother is unmarried. This is to protect the child against the consequences of growing up in these societies without belonging to a family. The Assembly postpones taking a final decision on this question until its next convention, so as to allow a chance for more in-depth consideration.'

The second view does not permit such a marriage unless two conditions are fulfilled: repentance by the parties and the completion of a waiting period. Among the scholars who support this view is the General Secretary of the Assembly of Muslim Jurists of North America. He said:

If a woman commits adultery, it is not lawful to marry her without the fulfilment of two conditions: one is her repentance and the other her observation of a waiting period. The evidence supporting this includes the verse that says: 'The adulterer couples with none other than an adulteress or an idolatress; and with the adulteress couples none other than an adulterer or an idolater. This is forbidden to the believers.' (24: 3) As God ordered the punishment of both adulterers, He also forbade the believers to marry them so as to leave them and their sins. God makes clear that an adulteress may be married only to an adulterer or an idolater. Such a man either believes in what God has legislated and that it is applicable to Him or not. If he does not abide by God's verdict and believe in it, he is an idolater, and if he commits himself to it, believing that it applies to him, but he has violated it, then he is an adulterer. Then God makes clear that such a marriage is forbidden: 'This is forbidden to the believers.'

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[82] Decision 5/4 of the European Council for Fatwa and Research.

God also says: 'Corrupt women are for corrupt men, and corrupt men for corrupt women, just as good women are for good men, and good men for good women. These are innocent of all that people may impute to them. Forgiveness and excellent sustenance are in store for them.' (24: 26) The corrupt women are those who commit adultery. The verse makes clear that a believer must not marry a corrupt woman because he himself is not corrupt. Her corruption is removed by sincere repentance, coupled with a resolve not to go back to sin. Therefore, if she removes her corruption through repentance, she may be married. This is further supported by the *hadith* that mentions that 'Marthad al-Ghanawi used to support and free captives in Makkah. There was in Makkah a prostitute called [Anaq, and he was friendly with her. He said: "I went to the Prophet and asked him: Shall I marry [Anaq? He did not answer me. Then revelation was given to him including the verse: 'With the adulteress couples none other than an adulterer or an idolater.' (24: 3) The Prophet called me and recited this verse to me, then said: Do not marry her."'

Some scholars disagree that this is a condition, but the correct view is that it is. One of the worst situations is to be married to a prostitute. This is readily accepted by human nature.

The question of observance of a waiting period is subject to dispute among scholars. The Hanafi school makes clear that no waiting period is required of an adulteress. Therefore, it is permissible for her to get married without observing a waiting period or its completion. If her pregnancy is by the man she marries, all scholars agree that they may be married and have intercourse.

The argument these scholars advance is that the prohibition of marriage to a woman who is known to be pregnant is that it is prohibited to have intercourse with a pregnant woman, but adulterous intercourse bears no sanctity as it proves no parenthood. If the woman is pregnant by someone else, it is permissible to have a marriage contract with her but, according to Abu Hanifah and Muhammad ibn al-Hasan, it is forbidden for them to have sexual intercourse until she has given birth. Performing the marriage contract is permissible because the adulterous relationship has no sanctity. The prohibition of intercourse is to avoid what is mentioned in the *hadith* that says: 'It is not permissible for a believer in God and the Last Day to irrigate someone else's seed with his own water.'

Abu Yusuf and others of the Hanafi school disagree, maintaining that it is not permissible to perform a marriage contract with a woman who is pregnant through adultery. Her pregnancy forbids intercourse with her, so it forbids making a marriage contract. The purpose of the marriage is to make intercourse lawful. If intercourse is not lawful, then the marriage contract is of no use, and as such it is not permissible.

A counter argument suggests that the prohibition of intercourse is due to a temporary cause that does not preclude the initiation or continuation of the marriage. Just like a woman being in the period, or in the postnatal period, does not prohibit her marriage even though it prohibits intercourse, it is permissible to perform a marriage contract with a pregnant adulteress.

According to the Shafi[i school, the adulterer's fluid that caused the pregnancy is a waste and cannot prove relationship or cause prohibition. Therefore, a pregnant adulteress has no waiting period to observe whether she is pregnant or not. If she is not, her partner or anyone else may have a contract to marry her. If she is pregnant, it is reprehensible to marry her before she gives birth.

The Maliki and Hanbali schools state that an adulteress may not be married until she has observed a waiting period. If she is pregnant, she must first give birth, and if she is not, she should first go through three menstrual periods.

From all this we conclude that repentance is necessary before a marriage contract with an adulteress can be valid. As for completing a waiting period, this is subject to different views.

Perhaps what is closer to the objective of Islamic law is to say that marriage between the two partners to an adulterous relationship is permissible if they sincerely repent, and this is not conditional on the completion of a waiting period. The basis of scholars who prohibit such a marriage is the multiplicity of partners during the pregnancy, but if the pregnancy is by the man who is to marry the woman, this does not apply.

The second issue is her marriage to her partner in adultery. Shaikh al-Rafie says in his book on family laws for Muslims in the West: 'Such a marriage is not lawful until she has confirmed that she is not pregnant. Unless this has been confirmed, the possibility of her being pregnant is there. It is well known that intercourse with a pregnant woman is unlawful. Moreover, confusion about the father of the child is stronger in the case of a woman who fornicates with several partners. If a woman is confirmed to be pregnant and the pregnancy is through adultery, the child is affiliated only to its mother. If no pregnancy is confirmed and she gets married before confirming that she is not pregnant, the pregnancy may be the result of adultery or the subsequent marriage and this confuses family relations, which is forbidden.'[83]

Sources

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[83] S. al-Rafie, 'Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb', p. 424.

38. MARRYING A COMMUNIST WOMAN

SIMILAR QUESTIONS

- Marriage to a Marxist woman.

The Issue

A Muslim man wishes to marry a woman who believes in Communism. Is it a lawful to do so?

Ruling

It is not permissible for a Muslim to marry a Communist woman because Communism is a creed of disbelief and hence a Communist woman is an unbeliever. A Muslim may not marry an unbeliever, as God says: ‘Do not marry women who associate partners with God unless they embrace the true faith.’ (2: 221) This question was discussed by the Islamic *Fiqh* Council of the Muslim World League in its first session held on 17 Sha[ban 1398 AH, 1978. Having reviewed the question, the Council adopted a decision that makes the ruling clear concerning Communism, explaining that it is a deviant belief that makes a person unbeliever.

The Islamic *Fiqh* Council refers in its decision to the objections raised by a number of Islamic societies in Singapore to the charter of women’s rights, which allows Muslim men and women to marry non-Muslims, and what ensued after that. The decision, which was unanimously approved, states:

Firstly, all scholars are in agreement that a marriage between a Muslim woman and a non-Muslim is strictly forbidden, as this is the clear import of religious texts. God says: ‘Do not give your women in marriage to men who associate partners with God unless they embrace the true faith. Any believing bondman is certainly better than an idolater, even though the latter may well please you. These invite to the fire; whereas God invites to paradise and to the achievement of forgiveness by His leave.' (2: 221) He also says: 'Believers! When believing women come to you as migrants, test them. God knows best their faith. If you ascertain that they are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them. Nonetheless, hand back to the unbelievers the dowries they have paid them.' (60: 10) Repetition in the verse is clearly noted: 'They (i.e. the believing women) are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them.' This repetition stresses the prohibition very emphatically, so as to totally sever a relationship between a believing woman and an unbeliever. This clear prohibition is followed by the divine order 'Nonetheless, hand back to the unbelievers the dowries they have paid them.' Thus the unbeliever husband is refunded what he paid for his marriage when his wife has embraced Islam so as not to combine the loss of his marital relation with a financial loss. This verse makes clear that when an unbelieving woman becomes a Muslim, she is no longer lawful to her unbelieving husband and their marriage is automatically dissolved [...] how can anyone imagine that a marriage between a Muslim woman and an unbeliever may be initiated? Indeed, God has made clear that when an unbelieving woman, married to an unbeliever, embraces Islam she may marry a Muslim man after her waiting period is over. This is clearly stated in the same verse: 'It is no offence for you to marry them after giving them their dowries.' (60: 10)

Secondly, it is not lawful for a Muslim man to marry an unbeliever, as God says: 'Do not marry women who associate partners with God unless they embrace the true faith. Any believing bondwoman is certainly better than an idolatress, even though the latter may well please you.' (2: 221) 'Do not hold on to marriage ties with unbelieving women.' (60: 10) When this verse was revealed, [Umar divorced his two wives who were unbelievers.

Ibn Qudamah said: 'All unbeliever women other than the followers of divine religions are forbidden for a Muslim man to marry, while he may marry virtuous women from among the followers of divine religions.' Scholars agree on this, although al-Shaykhiyyah scholars consider such a marriage forbidden.

It is better for a Muslim not to marry a follower of another divine religion when a free Muslim woman is available. Ibn Taymiyyah said that marrying from among them is reprehensible when free Muslim women are available. He adds that this is the view of most scholars. They base their view on the fact that [Umar told those who married women belonging to other divine religions to divorce them. They did, except Hudhayfah who did not wish to divorce his wife, though he later did. When a Muslim marries a follower of another divine religion he may incline to her, and when she gives him children love between them is bound to be even stronger.

A number of contemporary scholars say that marriage to an atheist woman is invalid. They add: the clearest example is a Communist woman who believes in materialism. One scholar explains: 'I am referring here to a woman who persists with her Communist philosophy. Some Muslims, men and women, may adopt the materialist creed without going deep into it so as to fully understand what it entails. They may be under a false impression when they listen to its advocates presenting it as merely concerned with economic reform and not encroaching on religion and faith. Such people need to be made aware so that they will not retain false impressions. They should be given the right arguments so that they can clearly see the difference between faith and unfaith, light and darkness. Whoever insists on Communism after all this is an unbeliever. All rulings applicable to unbelievers will then apply to him or her.'

Sources

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B. MARITAL SPLIT

39. APOSTASY AND MARRIAGE

Similar Questions

- Continuity of the marriage of an apostate;
- Effect of difference in religion if it happens after marriage;
- The effect of the apostasy of one spouse on the marriage.

The Issue

In countries which do not implement God's law and the punishment for apostasy is not enforceable, one of the two spouses may say or do what should incur the punishment for apostasy. He then regrets what happened and prays to God to forgive him. This may happen more than once on the same day. Does this invalidate marriage?

Ruling

This is not a new question; it is an age-old one and scholars have different views on it. What is new about it is that it frequently happens among Muslim minorities, like many other questions related to such minorities in particular.

One of the consequences of apostasy is that the marriage bond is severed, but scholars differ on whether this is considered a dissolution of the marriage or an irrevocable divorce. If apostasy occurs before the consummation of the marriage, the marriage contract is terminated. If it happens after the marriage has been consummated, the Maliki and Hanafi schools consider the marriage to have been immediately dissolved, while the Shafi[i school maintain that the marriage is terminated at the end of the woman's waiting period. Both views have been reported as expressed by

Ahmad ibn Hanbal.

The Kuwait *Fiqh* Encyclopaedia states the following:

All scholars agree that if either one of a married couple becomes an apostate they are forced to separate, so the man does not approach the woman, nor do they stay alone together, have intercourse or anything of the sort.

The Hanafi school adds: If either one of a Muslim married couple becomes an apostate, the woman is no longer his wife, whether she is a Muslim or the follower of another divine religion, or whether the marriage is consummated or not, because apostasy precludes marriage. The separation is an immediate dissolution of the marriage, not a divorce, and it does not require a ruling by a judge.

If the man is the apostate and this takes place before the marriage is consummated, the woman is entitled to half her dowry or to a gift. If the woman is the apostate, she is not entitled to anything. If the apostasy occurs after the marriage has been consummated, she is entitled to the full dowry, regardless of who of the couple is the apostate.

The Maliki school says in their more widely known view: If either one of a Muslim married couple becomes an apostate, the apostasy causes a single and immediately irrevocable divorce. If he re-embraces Islam, she can only be reunited with him in marriage through a new marriage contract. If the woman is the apostate and she intends her apostasy to dissolve her marriage, the marriage is not dissolved and she is given the opposite of her intention. It is also said that apostasy constitutes a dissolution of the marriage without a divorce.

The Shaf[i school says: If either one of a Muslim married couple becomes an apostate, their marriage is not dissolved until she has completed her waiting period and he has not repented of his apostasy and re-embraced Islam. When her waiting period is over, she is totally separated from him on the basis of dissolution of the marriage, not divorce. If he re-embraces Islam before the end of her waiting period, she is his wife.

The Hanbali school says: If either one of a married couple becomes an apostate before the marriage has been consummated, the marriage is immediately dissolved and if the man is the apostate she is entitled to half her dowry, but if she is the apostate, she is entitled to nothing. If the apostasy takes place after the marriage has been consummated, one report says that the dissolution is immediate and another that it occurs after the completion of the woman's waiting period.[84]

Fatawa al-Azhar includes a fatwa by Shaikh Muhammad Abdou which says: It is firmly established in Islam that an apostate is a person who has renounced Islam. The apostasy of either spouse constitutes dissolution of the marriage and the woman is finally separated from him. Therefore, in the case presented before us, once the husband referred to is confirmed to have renounced the Islamic faith, his marriage to his named wife is dissolved and she is finally separated from him. When her waiting period following his apostasy is over, she may marry someone else.

The IslamQA website includes the following fatwa:

If the husband says what constitutes apostasy and renunciation of Islam, such as verbal abuse of God or His messenger, or denial of something of the faith that is essentially known to all, then if the apostasy occurs before the marriage has been consummated the marriage is immediately dissolved. Ibn Qudamah said: 'If either spouse becomes an apostate before the marriage is consummated, the marriage is dissolved according to all scholars, but it is reported that Dawood was of the view that it is not dissolved, because marriage normally stays in force. In response we refer to the Qur'anic verses: "Do not hold on to marriage ties with unbelieving women." (60: 10) "They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them." (60: 10) The situation becomes one of difference of faith that prohibits sexual intercourse between them. Therefore, the dissolution of the marriage becomes necessary, just as in the case of a woman married to an unbeliever and she embraces Islam.'[85]

If the apostasy takes place after the marriage has been consummated, the question is whether the dissolution of the marriage takes place immediately or after the completion of the woman's waiting period. Scholars differ on this point. The Shafi[i school and the more reliable view of the Hanbali school is that if the man re-embraces Islam before the woman has completed her waiting period, the marriage remains in force. If the waiting period is over before he re-embraces Islam, the dissolution takes place, and he cannot be reunited with her in marriage without a fresh marriage contract. The Hanafi and Maliki schools take the view that apostasy brings about an immediate dissolution of the marriage, even after it has been consummated. Some scholars are of the view that if the apostate man repents before the waiting period has been completed he may be reunited with his wife, if she accepts and she has not married another man.

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[84] The Kuwait *Fiqh* Encyclopaedia, vol. 22, p. 198.

[85] Ibn Qudamah, *Al-Mughni*, vol. 7, p. 133.

The late **Shaikh Muhammad ibn Uthaymeen** responded to a question about a husband who is considered an apostate because he abandoned prayer. He said that there are only three possibilities: (i) The apostasy takes place before the marriage contract. In this case, the contract is invalid and the woman does not become his legal wife; (ii) it takes place after the marriage contract has been made but before the marriage is consummated and the couple have not been privately together so as to require a waiting period when the marriage is broken. In this case, the marriage is dissolved once the man has stopped praying; (iii) it takes place after the marriage has been consummated or after the couple have been privately together. In this case, the dissolution takes place when the woman has completed her waiting period. If he repents and starts praying before the waiting period is over, she remains his wife. If not, the marriage is dissolved from the time of the apostasy. In this case, the couple may or may not be reunited in marriage, provided that he re-embraces Islam and wants reunion. Scholars have their different views on this point.

A fatwa published by **IslamWeb.net** answers the question about the status of the wife. It says that the majority of scholars consider that apostasy by either spouse means the dissolution of the marriage, without divorce. Al-[Abbadi, a Hanafi scholar, said in his annotation of *Mukhtasar al-Qadduri*: Acccording to Abu Hanifah and Abu

Yusuf, if either spouse becomes an apostate, their marriage is terminated by dissolution, not divorce. Muhammad ibn al-Hasan, on the other hand, says that if the husband is the apostate, the marriage is terminated by divorce.

Al-Nawawi, a leading Shafi[i scholar said in *Al-Minhaj*: If the marriage is dissolved by apostasy after it has been consummated, the dowry is due. Thus, he considers the termination a dissolution of the marriage.

Ibn Qudamah, a leading Hanbali scholar said in *Al-Muqni[*: If either spouse becomes an apostate before the consummation of the marriage, the marriage is dissolved. She is not entitled to any portion of the dowry if she is the apostate, but if it is the husband then she is entitled to half the dowry. If the apostasy occurs after the consummation of the marriage, does the dissolution occur immediately, or on the completion of the waiting period? Two views are reported.

Again the point here is that he calls the termination of the marriage a dissolution.

We see that all three schools of Islamic law consider the apostasy to cause dissolution of the marriage, although they differ as to when this dissolution occurs: immediately, as the Hanafis say, which means that they cannot be reunited in marriage unless the man repents and goes through a fresh marriage contract. The other views differentiate on the basis of the time of apostasy: if it occurs after consummation, the marriage is dissolved after the woman has completed her waiting period and the man has not repented. They cannot have intercourse before he has declared his repentance. On the other hand, if the apostasy occurs when the marriage has not been consummated, the dissolution is immediate. This distinction between the two situations is the view of the Shaf[i school and one of the two reports of the Hanbali school.

The Maliki scholars have taken a different view to all these schools, considering apostasy to create a single irrevocable divorce that takes place immediately when the apostasy is ascertained. Ibn Farhun says in *Tabsirat al-Hukkam*: ‘Apostasy by either one of the spouses is an irrevocable divorce.’ This is the view of *Al-Mudawwanah*. Ibn al-Majashun reported that Malik considered it dissolution of the marriage, not a divorce.

The difference between the majority view and the Malikis, or between those who consider apostasy dissolution of the marriage and those who consider it divorce, is that if the apostasy is repeated and each time the couple are reunited in marriage, they may do so more than three times. According to the Maliki view, which considers apostasy a divorce, the marriage cannot be reinstated after the third time, unless the wife is married first to someone else and then gets divorced or becomes a widow in the normal course of life.

We are more in favour of the Maliki view, which makes apostasy result in an irrevocable divorce, because it is a separation resulting from uttering some words, and as such it is similar to divorce.

Therefore, the woman who put this question must not have any sexual relations with this man. He can renew his marriage to her again, up to three times, but if he commits apostasy again their separation is final. If he then repents and re-embraces Islam, she may not be married to him again unless she has first married another man. Alternatively, if he has not reached that number but commits apostasy she is irrevocably divorced from him. To be re-married to him they need to have a new marriage contract, and in this case we tell her that he is not a suitable husband. Islam urges its followers to marry a person who is religious. What sort of faith does a person have who dares to curse God Himself several times?

Sources

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39. SHAM DIVORCE

Similar Questions

- Paper divorce;
- Divorce to obtain nationality;
- Divorce in order to marry another wife in a country that disallows polygamy.

The Issue

A man may divorce his wife on paper only, or he may obtain a divorce certificate in order to circumvent certain legal restrictions and gain some benefit that he cannot recieve if he is married. A man may admit that he has divorced his wife once, without her knowledge, and obtain the relevant certificate then reinstate the marriage. He may do so in order to get her a visa to a country which does not allow polygamy or to enable her to get a social benefit that is given to divorced women. In this last case, the couple both agree to this deception. They obtain the divorce certificate and when the social benefit has been approved they resume their marriage. Does such sham divorce count as a real divorce?

Ruling

The first view considers such divorce effective. This is the view of most contemporary scholars. They say that such a sham divorce is real and counts against the divorcing husband. The Assembly of Muslim Jurists of America endorsed this view in the final statement concluding its second convention held in Copenhagen in 2004. The statement said: ‘A sham divorce counts against the person resorting to it, since he has spoken the words or appointed someone else to do it on his behalf, whether he intends it or not. Writing is the most important means of documentation in our modern world. As far as religion is concerned, such a divorce is disregarded unless it is intended. This is the weightier scholarly view.'

Evidence

This view is based on the *hadith* reported by Abu Hurayrah who quotes the Prophet as saying: 'Three matters are taken seriously whether they are said in earnest or in jest: divorce, marriage and re-instatement of marriage after divorce.' (Related by Abu Dawud, *hadith* No. 2,194; al-Tirmidhi, *hadith* No. 1,184; Ibn Majah, *hadith* No. 2,039). This *hadith* is graded as 'Good'. Al-Hasan al-Basri said: 'In pre-Islamic days a man might divorce his wife and then he would say that it was all in jest. Or he might free a slave, but keep that slave saying that it was all a joke. To stop this, God gave the order: "Do not take God's revelations in a frivolous manner." (2: 231) And the Prophet said: "Three matters are taken seriously ...". He thus ended this practice.' Malik quotes Sa[id ibn al-Musayyib as saying: 'Three matters cannot be taken in jest: marriage, divorce and freeing slaves.' Al-Hasan reports that Abu al-Darda', a companion of the Prophet, said: 'Three matters do not admit frivolity: marriage, divorce, and freeing slaves.' (Related by Ibn Abi Shaybah in *Al-Musannaf*, and al-Albani says that its chain of transmission is reliable up to al-Hasan).

Ibn Taymiyyah said: 'The Legislator[86] forbids that God's revelations should be taken in a frivolous manner and He has forbidden that His revelations, i.e. contracts, should be spoken in any way other than seriously intending their effects as defined in religion. Therefore, He has forbidden that they should be said in jest or under duress and He has forbidden the arrangement of a sham marriage to allow a divorcee to go back to her former husband. This is evidenced by His commandment: "Do not take God's revelations in a frivolous manner." (2: 231) and by the Prophet's *hadith*: "Why do some people jest about God's orders and take His revelations frivolously? A man may say to his wife: I divorce you; I take you back; I divorce you; I take you back." It is clear that taking such matters frivolously is forbidden.'[87]

The second view is supported by some contemporary scholars who say that such a sham divorce does not take place. They argue that the man does not intend to divorce his wife. Things come into effect on the basis of intentions, not words. These scholars, however, do not reply to any of the bases supporting the first view which declares divorce effective whether said in earnest or in jest, provided that the clear words of divorce have been pronounced.

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[86] This is a reference to God as He is the only one who legislates.

[87] Ibn Taymiyyah, *Majmu[al-Fatawa*, vol. 6, p. 65.

Sources

- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
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41. CAN A WOMAN INITIATE DIVORCE FROM HER HUSBAND?

Similar Questions

- Control of the marriage bond left to the wife;
- Women divorcing their husbands;
- The man relinquishes the right to divorce to his wife;
- When a woman hates to stay married to her husband.

The Issue

In modern times, women are competing with men in authority and in meeting the family expenses. Some women are demanding to have the right to terminate the marriage, so that a wife can divorce her husband if she wants. Is it permissible for a woman to include in the marriage contract a condition giving her the right to divorce or to demand this after the contract has been made?

Ruling

This is perfectly acceptable according to the majority of scholars, of both olden and contemporary times. Contemporary scholars who subscribe to this view include:

The European Council for Fatwa and Research discussed this question in depth and concluded with a decision that states: In the first place, Islam gives the right to divorce to the man. A woman may initiate divorce if she stipulates this as a condition in the marriage contract, or if her husband gives her this right after the contract has been made.[88]

The late Shaikh Hasan Mamoon, the former Mufti of Egypt, issued a fatwa on 13 November 1955 that said: What Islam stipulates is that if a man marries a woman on condition that she has control over herself whenever she wants, then she has the right to choose whatever she wants, in the same session or at a later time, until she has had her third and final divorce. The use of 'whenever' in the condition makes it generally applicable. She may choose to ask for a divorce time after time until she has had three divorces and their separation becomes final, even though her husband might not have re-married her after the first divorce. A clear and unambiguous divorce may follow a similarly clear and unambiguous one while she is still in her waiting period.

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[88] The European Council for Fatwa and Research, Decision 2/5.

Shaikh Mamoon based his fatwa on what is mentioned in major works of past scholars, such *Al-Tanwir, Radd al-Muhtar, al-Durr al-Mukhtar, Ghayat al-Bayan*, etc.

The Permanent Committee for Research and Fatwa gave the following ruling in answer to a question: 'If the situation is as you have described and your wife has initiated divorce herself, the validity of divorce depends on whether she may do so or not. If you have not given her the right to divorce and you have not given her power of attorney on the question of divorce, then what she did does not constitute a divorce and you do not need to remarry her. The right to divorce belongs to the husband, not to the wife. However, if you have given her the right to divorce or you have given her power of attorney concerning her divorce, then her action is valid. You may reinstate the marriage while she is in her waiting period, calling in two witnesses to the reinstatement of the marriage, unless the divorce was the last of three divorces. If it is the third divorce, then you cannot reinstate the marriage. She must first marry another man. If she gets divorced after this other marriage, then you may remarry her if she agrees, but you must have a new marriage contract and give her a new dowry. The waiting period for a pregnant woman lasts until she has given birth, and for a woman who is not pregnant three menstrual cycles. A woman who does not have the period, because she is too young or too old, observes a waiting period of three months.'[89]

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[89] Fatawa by The Permanent Committee for Research and Fatwa, fatwa No. 563, vol. 20, p. 209.

In another fatwa the Committee says: The normal practice is that divorce is under the husband's authority. God says: 'Prophet! When you[90] divorce women, divorce them with a view to their prescribed waiting period.' (65: 1) However, if the husband gives his wife power of attorney so that she may initiate divorce, and she acts on this, the divorce is valid.

IslamWeb

To give a wife control over her divorce or to assign it to a person of her choice means that she or the person she has chosen has the power to initiate her divorce as agreed. Sayyid Sabiq said: 'The right to divorce belongs to the husband. He may divorce her and he may give her the right to divorce. He may also give power of attorney to someone else to initiate the divorce. Neither assigning the right to divorce to her nor giving power of attorney deprives him of the right to divorce, nor prevents him from using this right when he wishes. The Zahiri school takes a different view, stating that a husband may not assign the right to divorce to his wife, nor give power of attorney to anyone to divorce her [...] because God has given the right to divorce to men not to women.'[91]

Scholars have different views on the case of a man who says to his wife: 'You have control over yourself.' Does this mean that she has such control forever or only on that occasion? In the latter case, she may initiate divorce while they are together on a certain occasion. If she does not and the occasion is over, her right to divorce is considered to have lapsed.

Ibn Qudamah said: 'Once the husband gives his wife control over herself, then she may exercise this right any time, not merely at that time.' This is attributed to [Ali, and it is the view of Abu Thawr, Ibn al-Mundhir and al-Hakam. On the other hand, Maliki, Shafi[i and Hanafi scholars consider it applicable to the one time only. Once it is over she has no right to divorce, because this is a question of giving her a choice, and the choice is limited to the time when it is offered. It is just like the husband saying to his wife: 'You make your choice.'

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[90] The plural form is used here indicating that the address is to the Muslim community as a whole.

[91] S. Sabiq, *Fiqh al-Sunnah*, vol. 2, p. 241.

Ibn Qudamah prefers the first view, because [Ali ruled about a man who assigned to his wife the right to divorce, saying: 'This is up to her until she relinquishes it.' Ibn Qudamah said: 'We do not know that anyone among the Prophet's companions differed with him, which means that this ruling has acquired unanimity. Moreover, it is like appointing an attorney to enforce divorce and it is not limited to a particular time, just like the attorney being someone else.'

An important point needs to be stated: If the husband reneges on giving his wife the right to divorce: is it acceptable or not? The weightier view is that he has the right to undo and withdraw what he has given her. In this case, the right to divorce belongs to him. If he has sexual intercourse with her after such a divorce, it is considered as going back. Giving her the right to divorce is a kind of giving her power of attorney. Taking action with regard to something in which one has given power of attorney to someone else cancels this power. If the woman gives back what has been assigned to her the assignment is over, just like a rejected or withdrawn power of attorney.

Our advice is that the power to divorce should not be assigned to the wife, because women are by nature more emotional and this could influence her action and make her initiate a divorce for the flimsiest of reasons. Ibn Rushd said: 'The reason for giving the right of divorce to men, not to women, is that women are less rational and more likely to be driven by an immediate desire in a situation of ill-treatment.'[92]

The Kuwait *Fiqh* Encyclopaedia says: 'Divorce is a legal action initiated verbally and as we have already noted it belongs by right to the husband. He has this right and the right to assign it to someone else, like all his other rights that are initiated verbally such as selling, leasing, etc. If a man says to another: I give you power of attorney to divorce my wife, naming her, and this man actually divorces her from him, the divorce is valid. If he says to his wife: I give you power of attorney to divorce yourself and she does so, the divorce is valid. She is not less than anyone else.'[93]

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[92] Ibn Rushd, *Bidayat al-Mujtahid*, vol. 3, p. 1,065.

Important note: If a man says to his wife: 'you have control over yourself', can he still divorce her? The answer is that he can. What he says to her is that she may initiate the divorce, but this does not stop him from initiating it himself.

Sources

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- Fatawa by the Egyptian Dar al-Ifta, Shaikh Hasan Mamoon, former Mufti of Egypt.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Home page for IslamWeb.net website: www.islamweb.net.
- The Kuwait *Fiqh* Encyclopaedia.

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[93] The Kuwait *Fiqh* Encyclopaedia, vol. 30, p. 140.

42. CAN A WIFE SEEK DIVORCE IF HER HUSBAND IS A TRANSGRESSOR?

Similar Questions

- Seeking divorce from an errant husband.

The Issue

A woman may have the problem of her husband being negligent of his religious duties and careless about Islam. As it is easy to commit all sorts of actions that Islam prohibits, and as many people take an irresponsible attitude, Muslim minorities suffer. If a woman is married to someone who frequently transgresses the bounds of Islam, can she seek divorce?

Ruling

If the husband goes beyond committing sins to consider them lawful then he takes himself outside the religion of Islam. As such his attitude causes the dissolution of his marriage. However, if he does not consider them lawful, the woman is advised to be patient with him, but she still has the right to seek divorce. The authorities that confirm this ruling include:

The European Council for Fatwa and Research said:

Marriage is a firm pledge and a sanctified bond that unites a man and a woman in accordance with God's revelations and His messenger's practice. It makes both spouses a match for one another, as God describes the marital relationship: 'They [i.e. your wives] are as a garment for you, as you are for them.' (2: 187) The word 'garment' gives an impression of closeness, warmth and adornment. Therefore, each must be good to the other, treating each other well and being patient with him or her. It is not permissible for a husband to divorce his wife in order to harm her, because this is an act that destroys an important partnership, in addition to the personal injury that the wife suffers. Some husbands do so and go further than that to unjustifiably deprive her of her children. Therefore, sewing discord between man and wife is one of the things Satan loves most. Jabir reports that the Prophet said: ‘Iblis places his throne on water and sends out his troops. The closest to him are the ones that cause the greatest evil. Any of them might come back and say, “I did this and that”, but Iblis will say to him, “This is of little value”. Ultimately one will come back and say: “I have not left this man until I caused a split between him and his wife.” Iblis will place him close to him and praise his deed.’ (Related by Muslim, *hadith* No. 2,813)

As it is forbidden for a man to cause harm to his wife by divorcing her for no valid reason, it is similarly forbidden for a woman to seek divorce without proper reason. A *hadith* quotes the Prophet as saying: ‘Any woman who asks her husband to divorce her for no harm done shall not experience the smell of heaven.’ (Related by al-Tirmidhi, *hadith* No. 1,189; Abu Dawud, *hadith* No. 2,226; Ibn Majah, *hadith* No. 2,055)

The *hadith* suggests that if she seeks divorce because she is being harmed or for a valid reason, she incurs no sin. The question is whether the transgression by the husband is of such a valid reason that allows a woman to seek divorce. There is no doubt that people differ as to the extent of their transgression and their treatment of their wives. Any husband may want his wife to help him commit a sin, such as serving him drinks, which of course is forbidden for anyone to do. In this case, she may seek divorce in order to avoid sharing his sin. A man may ill-treat his wife and cause her all sorts of harm. This gives her the right to seek divorce, particularly if this continues over time and she has little hope that things will improve. Others may do neither, a man may treat his wife well and be kind to her but transgress in other ways, for example by neglecting his prayers. In this case scholars have different views. The majority of scholars are of the view that a person who is negligent of his prayers is a transgressor and a sinner, not an apostate. As such, no dissolution of his marriage is warranted.

The view we take is that if the woman hopes her husband will mend his ways and that he may heed good advice and improve his situation, then she should keep faith with him and be patient, even though he may be a transgressor, negligent of his prayers or a drinker. This applies especially if they have children and she fears that her children may be lost as a result of the divorce. This is applicable provided that he does not deny the duty of prayer or thinks that drinking is permissible. If he does either then he is an unbeliever, which necessitates dissolution of their marriage.

Islam Question and Answer

A woman may request divorce if her husband insists on committing serious offences such as drinking and taking drugs. If her husband refuses to divorce her, she may put her request to a competent judge who will order the husband to divorce her. If the husband insists on his refusal, the judge can then enforce the divorce. If a competent judge is not available, then she puts her case to an Islamic institution in her place of residence, such as an Islamic centre. The people in charge should then try to persuade the husband to agree to divorce. If he gives no response, then they should resort to *khul[*. It is permissible for her to document this Islamic divorce with the necessary national authorities as such documentation is necessary.

IslamWeb

In answer to a question in this regard put to IslamWeb by a Muslim woman whose elderly husband did not attend to his prayers and consorted with loose women, the website reminded her that she should have made proper enquiries about the man and his commitment to Islam, as well as his morality, manners and temperament. In this instance, that he was old is not a fault of his but not attending to his prayers and having relations with loose women were great faults.

We would advise that the lady should remind her husband of the need to be God-fearing and of the Day of Judgement, gently counselling him to stop doing what is sinful. She might also give him some literature or broadcasts speaking about the effects of such sinful practices. If this brings about the desired result, all well and good. If not, the lady should seek divorce, because it is not good for her to live with a husband who neglects prayer and has relationships with loose women. If he refuses to give her a divorce, she should seek it through an appropriate legal channel or resort to *khul[*.

The situation of a religious woman living with a man who is not religious is very common. A good religious woman may face this as a test, so that she may prove her sincerity and dedication. God cites the case of Asya bint Muzahim, one of the best women ever, who was married to Pharaoh, one of the worst unbelievers ever.

We pray to God to give people the best that helps them and to choose for you all that is good and beneficial. We also draw people's attention to that it is not permissible for a Muslim woman to establish relations through the phone or the internet with men who are unrelated to her, because this may be a prelude to committing what is forbidden.

The Permanent Committee for Research and Fatwa

If your husband neglects prayers altogether, even intermittently, then you should seek termination of your marriage, because the deliberate negligence of prayer is tantamount to disbelief. The Prophet says: 'What brings a person into disbelief is the deliberate omission of prayer.' A Muslim woman may not remain married to an unbeliever, as God says: 'If you ascertain that they [i.e. migrant women] are believers, do not send them back to the unbelievers. They are no longer lawful [as wives] for the unbelievers, and these are no longer lawful to them.' (60: 10) Responsibility for the children is on both parents, as the Prophet says: 'Order your children to pray when they are seven years of age, and gently beat them for not praying when they are ten. Separate male and female children in beds.'

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43. DIVORCE BY A NON-MUSLIM JUDGE

Similar Questions

- Divorce through the court in the West;
- Civil divorce in the West.

The Issue

When relations between man and wife are strained, a woman may seek a legal judgement in her case from the courts of the country in which she lives. A judge who is not a Muslim may give a ruling ending the marriage according to the laws of the country. What is the status of such a divorce: is it binding in every respect? Can the couple stay together after such a court judgement?

Ruling

Fiqh councils differ on this question, giving three different views, as follows:

The first view is expressed by the Assembly of Muslim Jurists of America, making clear that a divorce granted by a non-Muslim judge is of no consequence. A woman who seeks a divorce should apply to Islamic centres for a ruling on her case. The concluding statement of the second convention of the Assembly of Muslim Jurists of America held in Copenhagen in 2004 said: 'If a man divorces his wife in accordance with Islamic law, he may go ahead and have this divorce certified by ordinary courts. If the couple are in dispute, after completing the required legal procedures Islamic centres may play the role of a Muslim judge when none is available. Resorting to man-made laws for the legal termination of a marriage is not sufficient to end the marriage from the Islamic point of view. If a woman is granted a judgement of divorce by a civil court, she should take this judgement to an Islamic centre to complete the Islamic process. There can be no argument on the basis of necessity, as Islamic centres are available and accessible in all areas.'

In the case of a woman who had access to the law in Lebanon, **a fatwa** by the General Secretary of the Assembly of Muslim Jurists of America says: ‘A civil divorce ends the marriage from the perspective of civil law, but the Islamic bond of marriage can only be broken by the husband, a Muslim judge or whoever plays the role of such a judge, namely the imams of Islamic centres and those responsible for family affairs in such centres. Therefore, a woman who obtains a civil divorce through a court should go to the Islamic centre taking her document of civil divorce. The imam at the centre should then contact her husband to ask him to divorce her. If he refuses, the imam can order the divorce on the basis of the harm that his refusal causes. In the case under question the woman may alternatively resort to an Islamic court in Lebanon to order the termination of her marriage. Taking either course will make her divorce final. The civil divorce alone is not sufficient for final termination of the marital relationship. Nor is it sufficient to allow the woman in question to marry another man.’

A paper by Dr Suhaib Hasan, on marriage dissolution through the channels of The Islamic Shari[ah Council in Britain, presented to the European Council for Fatwa and Research said: ‘If the ruling of dissolution is made by a non-Muslim judge, it is totally unacceptable. No dissolution can ever be made on such a basis, because a non-Muslim is unqualified to issue a ruling that is binding on a Muslim, as it is clearly stated in all works of *Fiqh*, or Islamic law.’

The second view is expressed by the European Council for Fatwa and Research and it considers that a divorce ordered by a non-Muslim judge is binding on Muslims. The Council argues that a person who performs his marriage in any of these countries has implicitly accepted the rules and laws of the country. As such, a person should accept the ruling by a non-Muslim judge on divorce. Society considers that the husband has given the judge authority to rule on his divorce, on the basis of the rule that says: ‘What is known to be part of social tradition has the same status as what is stipulated as a condition.’

The decision adopted by the Council on this question says: The normal situation is that a Muslim does not refer to anyone other than a Muslim judge or whoever fulfils the role of a Muslim judge. However, as there is no Islamic judicial system to which Muslims may refer in non-Muslim countries, a Muslim who solemnized his marriage according to the laws of these countries must implement the ruling of divorce made by a non-Muslim judge. Since such a Muslim married according to the same man-made law, he has implicitly accepted its consequences. One of these is that the marriage contract can only be terminated through a judge. This may be considered as an assignment of right by the husband, and such assignment is permissible according to the majority of scholars, even though the person concerned has not made this verbally. It is a rule of Islamic law that 'what is known to be part of social tradition has the same status as what is stipulated as a condition.' Abiding by court judgements, even though the judicial system is not Islamic, is permissible as it secures benefits and prevents harm, chaos and confusion. This is indicated by several prominent scholars such as al-[Izz ibn [Abd al-Salam, Ibn Taymiyyah and al-Shatibi.

A study prepared by the late Shaikh Faisal Mawlawi, the former Deputy Head of the European Council for Fatwa and Research, tackled the Islamic status of a ruling of marriage dissolution issued by a non-Muslim judge in a case involving a Muslim in a non-Muslim country, i.e. according to man-made laws that are at variance with Islamic law. The study confined itself to the status of divorce involving a Muslim by order based on the man-made law of the country where this Muslim resides. It outlines several situations to which this case may apply, including that of the marriage contract having been conducted according to Islamic law. In this case, the same law should be resorted to for the termination of the marriage. On the other hand, if the marriage is done according to Islamic law and one of the spouses is a Muslim while the other is European, then the law of the European country is most likely to be applicable, and the couple are practically subject to this law. The study concludes that the judicial order issued by a non-Muslim European authority is binding on the couple from the Islamic point of view, just like it is binding on them according to the law of the country. The study goes on to draw a comparison between rules of divorce according to European laws and Islamic rules.

The third view goes into more detail. It may be summed up as declaring that if a ruling of divorce issued by a court of law happens to be consistent with Islamic law, it is valid. If it is at variance with Islamic law, then it is invalid and inconsequential. The Prophet says: ‘Whoever introduces in this matter of ours something that does not belong to it shall have it rejected.’[94] (Related by al-Bukhari and Muslim).

A relevant paper points out that the fact that Muslims are living in the West today and that their marriage contracts are not recognized does not constitute an excuse for anyone to seek or accept judgement that is at variance with God’s law. God makes clear that whoever seeks arbitration under any law other than His is an unbeliever: ‘But no, by your Lord! They do not really believe unless they make you judge in all disputes between them, and then find in their hearts no bar to an acceptance of your decisions and give themselves up in total submission.’ (4: 65)

The paper suggests that there is no situation of necessity to justify acceptance of rulings based on man-made laws. If Muslims cannot arrange an Islamic divorce in Western countries, they can arrange it in Muslim countries, or give power of attorney to someone to conduct it on their behalf. It concludes that divorce in Western courts is valid for unbelievers and not valid for Muslims, unless it is in full agreement with Islamic law.

What is problematic here is that the paper does not specify what is meant by ‘divorce that is in full agreement with Islamic law.’ Perhaps it means that if the divorce aims to remove real harm caused to the woman, as in the case of one who is married to someone who beats her time after time, the divorce is valid. However, if the court dissolves the marriage because the husband has married a second wife, the dissolution is invalid. There is no doubt that most divorce cases submitted to such courts are based on the wife suffering harm at the hands of her husband or that she immensely dislikes him. If the paper means something different, it does not make this clear.

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[94] S. al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah fi al-Gharb*, p. 618.

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- Suhaib Hasan: 'Marriage Dissolution through the Channels of the Islamic Shari[ah Council', paper presented to the thirteenth session of the European Council for Fatwa and Research.
- The Muslim World League website: www.themwl.org,
- Salim ibn Abd al-Ghani al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*.
- Journal of the European Council for Fatwa and Research, Dublin.

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44. DIVORCE BY ISLAMIC CENTRES

Similar Questions

- Do Islamic centres have a judicial role?
- Is divorce ordered by an Islamic centre valid?

The Issue

This is a question about the legitimacy of divorce ruled by an Islamic centre, or a similar institution, in cases put to them by Muslim women who obtained an order of dissolution of their marriages from the courts of non-Muslim countries.

Ruling

The majority of contemporary Muslim scholars, whether members of *Fiqh* councils and assemblies or not, are of the view that Islamic centres in non-Muslim countries have the jurisdiction to divorce a woman when they determine that the continuity of the marriage causes her harm. Their ruling counts as a judicial ruling that dissolves a marriage, and the woman in such cases is divorced from her husband by such a ruling. The authorities confirming this ruling include:

The Islamic *Fiqh* Council of the Muslim World League

In its nineteenth session, held in Makkah 22–26 Shawwal 1428 AH, 3–7 November 2007, the Council studied the question of an Islamic centre or a similar institution issuing a ruling of divorce for a Muslim woman who puts her case to the centre after having obtained a ruling of divorce from a non-Muslim court. The Council discussed the challenges and problems faced by Muslims living in non-Muslim countries and their keen desire to know the proper rulings that they should implement in their lives. Thorough discussions followed the presentation of the studies and papers dealing with the subject and concluded with the Council's adoption of the following decision:

1. The Council urges Muslims living in non-Muslim countries to refer to reliable Islamic institutions and centres to put in place procedures for marriage, divorce and other types of marriage dissolution, paying due regard to the laws regulating such contracts in their countries of residence, so that everyone will get their rights.
2. The Council stresses that people's interests require that marriage contracts should include a condition stipulating that disputes should be referred to arbitration in accordance with Islamic law.
3. When a civil court in a non-Muslim country gives an order terminating a marriage, both husband and wife should refer to a reliable Islamic centre in order to take the necessary steps required by Islam to complete the divorce.
4. If the country's regulations concerning the dissolution of marriage allow the case to be referred to an Islamic centre, a Muslim lawyer or arbiter for an agreed settlement, it is obligatory to ask for and accept such referral.

The Council's decision recommends such institutions and centres that represent the Muslim community to undertake the following:

i. Set up committees for reconciliation and arbitration in family matters whose members should combine proper Islamic knowledge, understanding of the law and practical experience. Members of such committees should be given the necessary training and qualifications to help them undertake their work in the proper way from both the Islamic and legal points of view.

ii. Endeavour to have whatever privileges the laws of their countries allow upheld by courts, including decisions of the reconciliation and arbitration committees, the so-called religious mediator, etc. They should also endeavour to gain recognition of their legal jurisdiction in personal and family matters, so as to ensure implementation of Islamic law while observing the laws of their countries of residence.

iii. Islamic centres should coordinate their efforts to make Muslims more aware of the Islamic rules and procedures on personal and family matters.

Although this decision does not give Islamic centres clear authority to grant a divorce, its direction confirms that an Islamic centre in a non-Muslim country has an authority that is similar to that of a judge. The decision points out the desirability to include in marriage contracts a condition to refer disputes to Islamic centres for arbitration. It thus gives the centre the right to put the procedures of divorce in place.

The Assembly of Muslim Jurists of America

The concluding statement of the Assembly's second convention held in Copenhagen, in 2004 says that when a man divorces his wife in accordance with Islamic law, he may go ahead and have this divorce certified by ordinary courts. If the couple are in dispute, Islamic centres may, after completing the required legal procedures, assume the role of a Muslim judge when none is available. Resort to man-made laws for the legal termination of marriage is not sufficient to end the marriage from the Islamic point of view. If a woman is granted a judgement of divorce by a civil court, she should take this judgement to an Islamic centre to complete the Islamic process. There can be no argument on the basis of necessity, as Islamic centres are available and accessible in all areas.

A fatwa by the General Secretary of the Assembly of Muslim Jurists of America, in the case of a woman who has access to the law in Lebanon, says: 'A civil divorce ends the marriage from the perspective of civil law, but the Islamic bond of marriage can only be broken by the husband, a Muslim judge or whoever plays the role of such a judge, namely the imams of Islamic centres and those responsible for family affairs in such centres. Therefore, a woman who obtains a civil divorce through a court should go to the Islamic centre taking her document of civil divorce. The imam at the centre should then contact her husband to ask him to divorce her. If he refuses, the imam can order the divorce on the basis of the harm that his refusal causes. In the case under question the woman may alternatively resort to an Islamic court in Lebanon to order the termination of her marriage. Taking either course will make her divorce final. The civil divorce alone is not sufficient for final termination of the marital relationship. Nor is it sufficient to allow the woman in question to marry another man.'

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- Badriyyah bint Abdullah al-Aqeel, *Al-Nawazil fi al-Nikah wa Firaquh*.

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45. MARRIAGE TERMINATION BY ISLAMIC CENTRES AT THE WIFE'S REQUEST

Similar Questions

- How can a Muslim woman terminate her marriage in non-Muslim countries?

The Issue

When conflict persists between a couple living in a non-Muslim country and the woman needs to terminate the marriage through *khul[*, how can she achieve this?

Ruling

Fiqh councils allow Islamic centres to assume the status of a Muslim judge and carry out some Islamic procedures that lead to the termination of marriage at the wife's request, i.e. *khul[*. Hence an Islamic centre in a Western country may have the authority of a judge. Among the authorities endorsing this ruling are:

1. The Assembly of Muslim Jurists of America

The concluding statement of the Assembly's second convention held in 2004 stated that Islamic centres in non-Muslim countries have a judicial status. If the Director of an Islamic centre has the status of arbiter, either by the free consent of the two parties or because the Muslim community has given him this status, then his decision of termination of the marriage on the basis of harm suffered or ill-treatment is valid, but all necessary legal steps should be taken that are necessary to spare him any legal liability. The decision stresses that arbiters must follow all the required procedures in such cases, such as allowing ample time for both parties to put their cases, setting a time for the absent party to come to them, ensuring that their decision is not a hasty one and making every effort to rule fairly between the parties.

2. The European Council for Fatwa and Research

Having studied the issue of *khul[*, and the papers submitted about it, the Council adopted decision 3/15 at its fifteenth regular session held in Istanbul, 22–26 Jumada I 1426 AH, 29 June–3 July 2005. The decision says:

Khul[means the agreement between a married couple to terminate their marriage in lieu of compensation. Its legality is confirmed in the Qur'an and the authentic Sunnah. Its purpose is the removal of harm suffered by the wife when she finds it hard to stay with her husband either because she dislikes him or because he fails to give her her rights. One of the essentials of *khul[* is the compensation the wife pays to her husband in return for her divorce. It is lawful for the husband to take compensation unless he resorts to harming his wife so that she is compelled to relinquish her dowry or part of it. God says: 'Believers, it is unlawful for you to inherit women against their will, or to bar them from remarrying so that you may make off with part of what you have given them, except when they are guilty of a flagrant indecency.' (4: 19)

Whether *khul[* is considered a divorce or a dissolution of the marriage, the termination of the marriage is final which means that her husband can only remarry her with a new marriage contract and paying her a new dowry. If *khul[* is granted, the woman needs to observe her regular waiting period. *Khul[* does not need a permit by a judge or a ruler. It is enforced, with its relevant regulations, on both parties once they agree to it, but it must be registered with the authorities.

In non-Muslim countries where *khul[* is unknown, it is necessary for a couple whose marriage was conducted according to the law of the country to go through formal divorce procedures. The woman who has completed her waiting period may not marry another husband until all the formal procedures of divorce have been completed in accordance with the law that applies to her terminated marriage.

3. The Permanent Fatwa Committee at the Assembly of Muslim Jurists of America

The normal custom for *khul[* is that it should be done by the husband and no one may take away this right of his. He holds the marriage bond and he has the right to keep his wife or to part with her. However, in some cases a court may need to interfere, as in the case of a husband who denies his wife some of her rights, or persists in denying her request to part with him. In such a case a judge needs to interfere to achieve either reconciliation or termination. When the judge is unable to reconcile the two parties he orders the husband to accept the dissolution. If the husband refuses, the judge takes over and effects the dissolution. The same applies in a case when the husband, faced with such a request for termination, disappears and his place of abode becomes unknown and there is no way to contact him. The judge should know that his intervention is not the normal way and, therefore, he should make every effort to contact the husband and inform him of his wife's request for dissolution and order him to accept it. He should repeat this two or three times, each time giving him a reasonable period to consider, ensuring that he is informed of all this and that the period of time given is suitable. All this should come after all efforts to bring about reconciliation between the couple have failed. In this case, the judge's interference is to remove harm caused to the wife. Unfortunately, some Islamic centres effect the *khul[* as soon as they have heard the wife's complaint, making no serious effort to contact the husband and hear his side of the story, or to enable him to do his part in granting his wife her request of termination. Such precipitous action by some Islamic centres is wrong and incurs a sin. Perhaps it is possible to say that in such cases the *khul[* may not be valid.

In his paper presented before the European Council for Fatwa and Research on the dissolution of marriage through the channels of the Islamic Shari[ah Council in Britain, Dr Suhaib Hasan referred to judicial rulings on personal and family affairs. He said that the late Shaikh Ashraf Ali Tahanooni, a prominent scholar from India, published a book more than three quarters of a century ago entitled *Al-Hilah al-Najizah lil-Halilah al-[Ajizah,*[95] in which he tried to find a solution to really complex situations that are difficult to settle according to the Hanafi school by resorting to some rulings issued by Maliki scholars. These are questions like the status of the wife of a lost husband, or one who is insane or absent and nothing has been heard from him for a long time. He discussed the suggestion that in a town where there is no Muslim judge, the local Muslim community may appoint an arbitration committee. Tahanooni said that the matter was not difficult in Indian states with a Muslim judge, but in areas under the Indian government where there is no Islamic court, a judge appointed by the government could deal with family matters if he is a Muslim and his ruling is in agreement with Islamic law. Such judgement is acceptable as clearly mentioned in *Al-Durr al-Mukhtar*. A judge may be appointed by any ruler, whether fair or not, and even if he is an unbeliever, as mentioned by Miskin and others.

A judgement issued by a non-Muslim judge is totally unacceptable and no dissolution of the marriage is valid on such a basis, This is because no unbeliever has jurisdiction over a Muslim, as clearly stated in all books of Islamic law.

If judgement is collective, as happens when a problem is considered by a number of judges, an arbitration committee or a group of people, all of the participants must be Muslims. If even one is not a Muslim, then their judgement is unacceptable and the marriage cannot be dissolved by them. In any area where there is no Muslim ruler and reference cannot be made to a court with a Muslim judge, or where judgement is given by a Muslim judge but not on the basis of Islamic law, the woman who is seeking dissolution does not have, according to the Hanafi school, any way open to her other than that her husband agrees to divorce her or give her *khul[*. If the man refuses to grant his wife a divorce, or if he cannot be contacted and his whereabouts are unknown, or if he is insane and the woman cannot tolerate this situation, there is a way out according to the Maliki school of Islamic law. She can put her case to a Muslim committee of arbitration, a procedure which the Malikis consider valid where there is no Muslim judge. Al-Salih al-Tunisi, an eminent Maliki scholar who taught at the Prophet's mosque in Madinah, said: 'The well-known view of the majority of scholars which is also put in practice is that dissolution of the marriage, its procedures and all that relates to it is up to the judge. If none is available then three or more individuals from the Muslim community can replace the judge. One person is not sufficient in such cases. The view that one person may be sufficient is said to have been approved by al-Ajhuri in one of two reports attributed to him. Some Egyptian scholars follow this view, but the first view is the upheld one. Therefore, there is no need to speak about this single arbiter or the tasks assigned to him, as this is very clear: he should be an Islamic scholar and a wise man who is consulted by people in his community regarding their problems.'

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[95] The title of the book may be translated as ‘A ready ploy for a desperate woman’.

A good example to follow is the Islamic Emirate at Bihar, which was set up by the Muslim community during the period of British colonialism for the task of settling their disputes. This institution continued to work after India gained independence and its function was considered supplementary to Indian courts, which were under immense pressure and with huge backlog of cases.

The Islamic Shari[ah Council's work is not limited to issuing fatwas and looking into cases of *khul[*, divorce and marriage dissolution. It also includes:

1. Performing marriage contracts.
2. Settling disputes, in addition to what has been said of working out reconciliation between quarrelling couples.
3. Stating the legal Islamic view on questions it receives from lawyers or British courts.
4. A member of the Council attends, when necessary, a British court to explain the Islamic view on a particular question put to the Council.

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46. CUSTODY OF A MUSLIM CHILD BY A NON-MUSLIM WOMAN

Similar Questions

- Can a mother who follows a divine religion other than Islam be given custody of her child?
- Custody given to a woman following a divine religion;
- Custody when religions differ.

The Issue

When a marriage breaks up through the husband's death or divorce, or through the death of the wife who is a follower of a divine religion, and there is a young child, who takes custody of the child? Does the difference in religion preclude child custody?

Ruling

The difference in religion does not remove the mother's right of custody until the child becomes aware of religion, unless it is feared that the mother will instil in her child her disbelief. Only in this case is the child removed from her.

The Assembly of Muslim Jurists of America

Being the child's mother, a follower of an earlier divine religion has the right of custody until the child is seven years of age, unless such custody could cause harm to the child regarding its faith, as happens if the mother tries to instil in the child some errant beliefs. When the child is seven, custody goes to the father because at this age the child is ready to learn and attend to education. In principle, custody is granted to ensure the interests of the child and protect it against what causes harm or detriment. If a non-Muslim is given custody of a child custody during this stage, this could lead to a great loss.

Whoever is married to a follower of another divine religion should make clear to her that their children follow his faith, Islam, and that should the marriage be terminated, then their custody belongs to him.

Al-Azhar's fatawa

The person who has the first right of custody of a child, whether boy or girl, is its natural mother, not its mother through breastfeeding, as long as the child is young and needs custody. She is the most caring and compassionate. She is the one who worries when the child is ill and takes good care of it. This is what God has placed in human nature. A difference in religion does not affect the right of custody, because custody relates to the care of the child and this is something that is not affected by a difference in religion. Therefore, a non-Muslim mother, whether she is Jewish, Christian, pagan or Zoroastrian, has the first claim to the child's custody until the child is aware of religion or unless it is feared that the child will be leaning towards disbelief, even though it does not yet understand the meaning of faith. Thus, if it is feared that the child might be leaning to disbelief it is taken away from its mother, even though it does not understand what belief and faith means.

In conclusion: 'If it is feared that the mother will give the child wine or feed him with pork and bacon, the child is taken away and its custody is given to a Muslim.' It is clear that the mother's custody is removed by a judge.

To sum up: a non-Muslim mother has the first claim to the custody of her child until it can understand religion and there is no fear that the child will beome familiar with the beliefs and habits of non-Muslims. If there is such a fear, then the non-Muslim woman loses her right to custody of the child. The decision on custody is then left to the judge, unless there is a woman who can take custody and no fear of the child becoming familiar with the beliefs and habits of non-Muslims is associated with her. Custody of a Muslim child is given to one from whom there is no fear with regard to the child's person, faith, moral values and behaviour.

With regard to a particular question, custody of a young girl is given to her mother, unless it is feared that the girl will become familiar with the beliefs and habits of non-Muslims. If this is feared, then custody is transferred to her paternal grandmother.

Majallat al-Buhuth al-Islamiyyah, published by the Permanent Committee for Research and Fatwa

Al-Nawawi wrote in *Rawdat al-Talibin*: Custody of a child belongs to the child's mother if she wants it, but there are some conditions. One of these is that she should be a Muslim, if the child is considered Muslim because its father was a Muslim. No unbeliever may take custody of a Muslim child. However, al-Istakhri says that she may. It is also said that a mother who follows a divine religion has a stronger claim to the child's custody than its Muslim father until the child is seven years of age. Its custody is then transferred to the father. Our scholars say that the first view is the correct one.

In light of this, the child's custody belongs to its Muslim relatives, according to their order. If none of these is available, then its custody belongs to the Muslim community. If a non-Muslim child describes Islam it is taken away from non-Muslims, whether we ascertain its belonging to Islam or not. They are not allowed to take custody of the child. The custody of an unbeliever or insane child is given to its Muslim relative, because the child benefits by that.[96]

Shaikh Ibraheem al-Naifar

The question says: a Muslim man married a Jewish-French woman, and she gave birth to several children. He passed away and the children were in their mother's custody. She wanted to take them to France, but their paternal uncle objected and wanted to take custody away from her. To do so he applied to a French court. What is the Islamic view?

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[96] Published in *Majallat al-Buhuth al-Islamiyyah*, No. 53, p. 168.

The answer is that women have the best claim to custody, because they are more caring and compassionate to children. Furthermore, they are better able to attend to the children's needs and they show great patience with them. Al-Qarafi said: 'The general Islamic rule is that everything is given to those who are better able to attend to it and can understand it better. Therefore, army command is given to those who know the strategy of war and can keep the army in discipline and work out a battle plan. In the legal system, judicial posts are given to those who know the law and its rules, and how to apply to these. In custody, preference is given to those who are better able to take care of the child and ensure its cleanliness in body and clothes, etc.'

Evidence

The woman who has the strongest claim to custody is the child's mother, because she is very compassionate to her own child. None is more compassionate than a mother except God. Therefore, He has forbidden separating a child from its mother. In an authentic *hadith* it is written: 'Whoever separates a mother from her child, God will separate him from his loved ones on the Day of Judgement.' In another *hadith*: 'No mother should be left in worry about her child.' [Abdullah ibn [Amr reported: 'A woman said: "I have born this son of mine in my tummy and reared him close to me, and I nursed him on my breast. Yet his father wants to take him away from me." The Prophet said: "You have better claim to him unless you get married."' (Related by Ahmad, *hadith* No. 6,707; Abu Dawud, *hadith* No. 2,276) The *hadith* makes clear that unless the child's mother marries another husband, she is more entitled to its custody. When she is married to another husband she will be preoccupied with her new duties and her husband may not allow her to take proper care of the child, whom he may not love. He may, for example, not let her keep the child close to her at night. He will not have the same emotional attachment towards the child that its own father has.

Just like she loses her right to custody of the child when she gets married, she also loses it if she is not a Muslim. She may give it wine or feed it with pork and bacon, or bring it up as a non-Muslim, while the child should actually be brought up to follow its father's faith. If this is feared, then she has no right of custody, unless she is placed with Muslims who will ensure that nothing of this happens and the child is brought up as a Muslim. If she agrees to this and stays with Muslims she retains her right of custody; otherwise the child is taken away from her and given to the next one who meets the conditions of custody.

In conclusion we may say in answer to the question that this Jewish woman may well bring her children up as non-Muslims and teach them values and manners that are different from those of Muslims. She has refused to live with Muslims and as such she has no right of custody. On the point of the right of custody of a non-Muslim woman, Khalil said: 'If this is feared she is joined to Muslims, even though she may be a Zoroastrian whose husband converted to Islam.' However, she is not denied the right to visit her children and attend to them in the presence of Muslims.[97]

Sources

- *Al-Zaitoona* Magazine.
- The Egyptian Dar al-Ifta.
- The Assembly of Muslim Jurists of America.
- *Majallat al-Buhuth al-Islamiyyah* published by the Permanent Committee for Research and Fatwa in Saudi Arabia.

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[97] *Al-Zaitoona* Magazine, 9/15.

C. INHERITANCE

47. INHERITANCE WHEN RELIGIONS DIFFER

Similar Questions

- A Muslim's inheritance from a non-Muslim;
- A non-Muslim's inheritance from a Muslim;
- A Muslim's inheritance from the follower of a divine religion.

The Issue

Who inherits in cases where a Muslim dies in a non-Muslim country where he has Muslim and non-Muslim relatives, or an unbeliever dies and he has Muslim relatives. What should a person do if the law gives him a share of inheritance despite the difference in faith, or if the law deprives him of inheritance while Islamic law entitles him to a share?

Ruling

There are several possibilities here, and each has a different ruling:

The first possibility is that of a deceased Muslim with non-Muslim relatives and the law of the country entitles them to shares of inheritance alongside his Muslim heirs. The only way open to a Muslim in such a situation is to abide by this requirement, which is unfair. This is most clearly apparent when the deceased's wife is non-Muslim and they have children. The law of the country may give her half the deceased's estate.

The General Secretary of the **Assembly of Muslim Jurists of America** writes: 'What American law states is at variance with what God has revealed and it is unlawful for him or her to act on it. He should, indeed he must, write a proper will to give his inheritance in accordance with the Islamic system of inheritance. According to the rules of inheritance, she gets one-eighth, not one-third, because her husband has children who are entitled to their appropriate shares. God says: "You shall inherit one half of what your wives leave behind, provided that they have left no child; but if they have left a child, then you shall have one-quarter of what they leave behind, after [deducting] any bequest they may have made or any outstanding debt. And they (i.e. your widows) shall inherit one-quarter of what you leave behind, provided that you have left no child; but if you have left a child, then they shall have one-eighth of what you leave behind, after [deducting] any bequest you may have made or any outstanding debt. If a man or a woman has no heir in the direct line, but has a brother or a sister, then each of them shall inherit one-sixth; but if there be more, then they shall share in one-third, after [deducting] any bequest which may have been made or any outstanding debt, neither of which having been intended to harm [the heirs]. This is a commandment from God; and God is all-knowing, gracious." (4: 12) God's authority is higher and His rule is superior.'[98]

The second possibility is that of the deceased being a non-Muslim who has Muslim relatives, and the law gives them shares of inheritance. Is it permissible for them to take these shares or not? Scholars have two different views on whether a Muslim may inherit from a non-Muslim. **The majority** of scholars say that a Muslim may not inherit from a non-Muslim. They cite in evidence an authentic *hadith* reported by Usamah ibn Zayd: 'The Prophet said: "A Muslim does not inherit from an unbeliever, and an unbeliever does not inherit from a Muslim."' (Related by al-Bukhari, *hadith* No. 25; Muslim, *hadith* No. 6,383) The Kuwait *Fiqh* Encyclopaedia states: 'The majority of Muslim scholars endorse the ruling that a Muslim may not inherit from an unbeliever.'[99] The Permanent Committee for Research and Fatwa, under the chairmanship of Shaikh Abd al-Azeez ibn Baz, issued many fatwas confirming this view.[100] The Egyptian Dar al-Ifta also gave similar fatwas.[101] **The other view** permits a Muslim to inherit from an unbeliever. This is the view of Mu[adh ibn Jabal and Mu[awiyah ibn Abi Sufyan, both of whom were companions of the Prophet. It is also the view of Sa[id ibn al-Musayyib, Masruq and Ibn Taymiyyah. In evidence, they cite the *hadith* quoting the Prophet as saying: 'Islam supersedes and is not superseded.'[102] Scholars who subscribe to this view maintain that the superiority of Islam means, inter alia, that a Muslim may inherit from a non-Muslim. Those who take the first view interpret the *hadith* as speaking of Islam itself being superior in the sense that it has the more profound argument, and it is triumphant. Ultimately, it is the Muslims that will be given victory.[103]

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[98] Website of Salah al-Sawy: www.assawy.com.

[99] The Kuwait *Fiqh* Encyclopaedia, vol. 3, p. 25.

Decision 1/5 of the European Council for Fatwa and Research adopts the second view, stating: 'The Council is of the view that Muslims should not be denied their inheritance from their non-Muslim relatives, or what such relatives may give them by will.' This is not in conflict with the authentic *hadith* that says: 'A Muslim does not inherit from an unbeliever, and an unbeliever does not inherit from a Muslim.' This *hadith* should be interpreted to refer to an unbeliever who is hostile to Islam. It should be noted that in the early period of Islam, Muslims were not denied the right to inherit from their non-Muslim relatives. Among the Prophet's companions, Mu[adh ibn Jabal and Mu[awiyah ibn Abi Sufyan were of this view. Among their successors who also shared this view were Sa[id ibn al-Musayyib, Muhammad ibn al-Hanafiyyah, Abu Ja[far al-Baqir and Masruq ibn al-Ajda[. It is endorsed by Ibn Taymiyyah and Ibn al-Qayyim.

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[100] For example, fatwa No. 1,644, issued on 10/8/1397 AH, 1977.

[101] The late Shaikh Muhammad Hasanain Makhloof issued a fatwa to this effect in 1372 AH, 12 May1953. The late Shaikh Ahmad Hireidi issued a similar fatwa on 27 February 1964.

[102] Related by al-Darqutni, *hadith* No. 395; al-Bayhaqi, vol. 6, p. 205. Al-Albani grades this *hadith* as Good.

[103] The Kuwait *Fiqh* Encyclopaedia, vol. 3, p. 25.

In *Al-Khulasah fi Fiqh al-Aqaliyyat* we read: ‘It is wrong to criticise the European Council for Fatwa and Research for this fatwa permitting a Muslim to inherit from a non-Muslim. The fatwa upholds the view of Mu[adh ibn Jabal, Mu[awiyah ibn Abi Sufyan, Muhammad ibn al-Hasan, Sa[id ibn al-Musayyib, Masruq, Yahya ibn Ya[mur, Ishaq ibn Rahaweih, Ibn Taymiyyah and Ibn al-Qayyim, even though it is at variance with the view of the founders of all four schools of Islamic *Fiqh*.’

The fatwa of the Assembly of Muslim Jurists of America permits Muslims to inherit from non-Muslims. It says: ‘A *hadith* says: “A Muslim does not inherit from an unbeliever, and an unbeliever does not inherit from a Muslim.” But we know also that among the Prophet’s companions were people like Mu[adh ibn Jabal and Mu[awiyah who allowed a Muslim to inherit from his non-Muslim parents. Thus a number of scholars take the view that the non-Muslim referred to in the above-quoted *hadith* is a combatant who actually fought against Muslims. This was the case with most unbelievers when the Prophet made this statement. According to this view, if the parents of this Muslim person are non-combatant, their children may inherit from them.’

A well known Islamic principle confirms this view. It says: ‘Islam elevates, but does not bring [a Muslim] down.’ This means that those children should benefit by whatever is left to them by their non-Muslim parents and never be denied it.

The Academy of Islamic Research at al-Azhar, Cairo, issued a fatwa based on the unanimously held view of scholars concerning the first case of an unbeliever’s inheritance from a Muslim. The fatwa makes clear that a woman who follows a divine religion other than Islam cannot inherit from her Muslim husband. The fatwa considers this a well-settled question. Dr Nasr Wasil Fareed, the former Mufti of Egypt, said that this is an essentially known aspect of Islam, allowing no argument or review. The ruling is agreed by all scholars, without dissent.[104]

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[104] The wbsite of the Egyptian Dar al-Ifta: www.dar-alifta.org.

As for the other case, the fatwa states: ‘Some scholars disagree with regard to a Muslim inheriting from an unbeliever. They allow such inheritance, making it lawful for a Muslim to inherit from his non-Muslim relative, because “Islam supersedes and is never superseded”, as the Prophet states. They also cite the case when [Ali killed the apostate al-Miswar al-[Ujali and ruled that his estate should go to his Muslim heirs.’

A study entitled ‘Difference in Religion and its Effect on a Muslim’s Inheritance from His non-Muslim Relative’ says the difference in faith has no effect on the right of a Muslim to inherit from his non-Muslim relative. A Muslim may inherit from his relative who is an unbeliever. This is the view endorsed by Ibn Taymiyyah, Ibn al-Qayyim and the European Council for Fatwa and Research.

The third possibility is that of a bequest by will made to a Muslim by a non-Muslim. This is perfectly acceptable from the Islamic point of view. If the deceased’s estate is divided on the basis of a will made by the deceased, who is non-Muslim, and it includes a Muslim relative or friend, the Muslim beneficiary may take whatever is assigned to him by such a will.

The fourth possibility is a bequest by will made by a Muslim to a non-Muslim. Some scholars are of the view that it is permissible for a Muslim to give by will to his wife, mother, or another relative who is not a Muslim what they would have inherited from him had they been Muslims. They cite in evidence the Qur’anic verse that says: ‘It is prescribed for you, when death approaches any of you and he is leaving behind some property, to make bequests in favour of his parents and other near of kin in fairness. This is a duty incumbent on the God-fearing.’ (2: 180) Some scholars interpret this verse as making bequests in favour of non-Muslim parents. Other relatives may also be included on the basis of analogy.

The rule that says that the followers of two different religions may not inherit from each other means that a Muslim may not inherit from a non-Muslim and vice versa. However, it is permissible to take what the testator gives during his lifetime, including it in his will. This applies to what is given freely by will, not by a system of inheritance.

The Assembly of Muslim Jurists of America does not say anything about this question. Its second session devoted to family cases in American society did not discuss it, nor did the European Council for Fatwa and Research discuss this question.

Sources

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- Ali ibn Nayef al-Shahhood, *Al-Khulasah fi Fiqh al-Aqaliyyat*.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.

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D. MISCELLANEOUS

48. MARRIAGE OF CONVENIENCE

Similar Questions

- Unintended marriage;
- Marriage to obtain a permit of residence in non-Muslim countries;
- White marriage;
- Paper marriage.

The Issue

A man and a woman agree to go through a marriage contract so that he can present the contract to a government department to obtain certain benefits. The marriage contract will be merely a document presented to officials but there will be no real marriage between the couple. In most cases, such a marriage contract is made in order to obtain naturalization, or a permit of residence, or a visa, or some other social benefit given to families. The contract is registered with the relevant government authority.

Ruling

A sham marriage, with no intention to make it a real and permanent marriage as required by Islamic law, is forbidden. According to Islam marriage is a firm pledge, described in the Qur'an in such terms: 'How can you take it away when each of you has been privy with the other, and they have received from you a most solemn pledge?' (4: 21) The prohibition is even stronger if the marriage contract is between a Muslim woman and a non-Muslim man, entered into to enable her to get certain benefits.

Evidence

Such a contract is devoid of content and runs against the purpose of marriage endorsed by Islamic law. Moreover, it creates a practical problem as it makes each of the two parties a spouse to the other and a marital relationship is created even though the contract itself is flawed.

Scholars are unanimous that such a marriage is forbidden. Decisions by *Fiqh* councils are also clear that it is forbidden. The concluding statement of the second convention of the Assembly of Muslim Jurists of America states: 'A sham marriage is a marriage contract when the two parties do not intend it to create a marital relationship between them. As such, it does not conform to any essentials or conditions and is only used as a means to obtain certain benefits. As such, it is forbidden from the Islamic point of view because it is not intended as a marriage but aims to serve other purposes. It includes conditions that are in conflict with the purpose of marriage and its practical status depends solely on the proof of it being merely a paper contract. If it is proven in a court of law that it is nothing but a paper contract, it is ruled invalid. Otherwise, it is ruled as correct and valid if it fulfils the essentials of a marriage contract and there is no reason to prevent such a marriage between the two parties.'

The European Council for Fatwa and Research issued a fatwa on 10 March 2009 declaring such a marriage forbidden. The Council received a question on this matter and it said in its reply:

The first case sets the duration of this marriage, ending it once the husband obtains a residence permit or obtains naturalization. This is forbidden and the two parties commit a sin by going through with it, because such a contract makes a travesty of the Islamic objectives of marriage. It goes through the procedure of a marriage contract but is intended for something other than marriage. Even though it may fulfil the conditions of a proper contract, it remains forbidden. Moreover, as the law of the land does not permit making such a contract, its prohibition from the Islamic viewpoint is strengthened. In this the law of the land is in full agreement with Islamic law. Furthermore, this case is similar to the *mit[ah*, or temporary, marriage which the Prophet has forbidden, as confirmed in a *hadith* reported by Saburah ibn Ma[bad: 'I was with the Prophet when he announced: "People, I had given you permission to have temporary marriage with women, but God has forbidden this until the Day of Judgement. Whoever has a woman on such an arrangement, let her go free, but do not take back anything you have given them.''' (Related by Muslim, *hadith* No. 1,406) The similarity between this case and *mit[ah* marriage is that it is made for the duration it takes one party to obtain a permit of residence. It will terminate after that.

The second case is forbidden like the first one. It involves a situation that is absolutely forbidden, which is a marriage between a Muslim woman and a non-Muslim man. The very contract is flawed on two counts: the purpose for which it is made and the marriage itself which is unlawful from the Islamic point of view.

The third case is that of marriage with a man intending to divorce the woman once he obtains his residence permit, but he does not inform the woman of his intention when they marry. Although this contract is formally correct, the man is committing a sin by cheating the woman, concealing his original intention to divorce her. Islam views marriage as intended to last for life and divorce is something that comes up after the marriage is in place. Hence, a temporary marriage is forbidden and its contract is flawed. In an Islamic marriage contract, commitment and acceptance are essential conditions. When a woman accepts a man as a husband, she is taking him as a real husband for life. Had she known that he intends the marriage to be temporary and that he will divorce her whenever he wishes, she would never have accepted him. If at the time of making the marriage contract the man has the intention to divorce the woman, his intention affects the validity of the contract because the woman accepts it on a different basis. There are several *hadiths* on this subject, reported by a number of the Prophet's companions.

The Permanent Committee for Research and Fatwa also issued a fatwa making clear that such a marriage is forbidden. It says: 'A marriage contract is given great status by God, as he describes it as "a most solemn pledge." (4: 21) Therefore, it is not permissible to go through a marriage contract for false pretences, in order to obtain a permit of residence.' The Committee was asked about making a sham marriage contract in order to obtain nationality. Its answer was: 'Such a contract is not permissible; as it involves lying and cheating.'

The late Shaikh Abd al-Azeez ibn Baz was asked about this type of marriage contract and he said: 'This does not come into the purpose of marriage in Islamic law. It is a marriage intended to obtain a permit of residence then divorce. It appears to me that this is not permissible in Islam.'

Sources

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- Salim ibn Abd al-Ghani al-Rafie, *Ahkam al-Ahwal al-Shakhsiyyah lil Muslimin fi al-Gharb*.

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49. ADOPTING THE HUSBAND'S FAMILY NAME

Similar Questions

- Wife acquiring the husband's family name;
- Women giving themselves their husband's family names.

The Issue

In some Western countries, it is normal for a woman to discard her family name when she is married and replace it with her husband's family name. Is this permissible?

Ruling

There are two views on this matter:

The first view makes it clear that no one may affiliate himself to anyone other than his own father.

Evidence

'Anyone who knowingly alleges to belong to a person other than his own father is an unbeliever, and anyone who knowingly alleges to belong to a people when he has no relation with them shall have his place in hell.' (Related by al-Bukhari, *hadith* No. 3,508)

The Permanent Committee for Research and Fatwa said in its fatwa on this point: 'It is not permissible for the woman in this case to change her family name, because this involves a lie and forgery.'[105] In another fatwa,[106] it is stated: 'This is an aspect of affiliating oneself to someone other than one's father, which is very serious indeed. The Prophet says: "Whoever affiliates himself to someone other than his father [...] incurs the curse of God, the angels and all mankind."' (Related by Ibn Majah, *hadith* No. 2,599. Al-Albani grades it as authentic in his *Sahih al-Jami[*, No. 6,104) This is a very serious threat to anyone who changes his father's name or the name of his family and affiliates himself to a family or a people to whom he does not belong, whether a man or a woman.

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[105] The General Presidency of Scholarly Research and Ifta: www.alifta.net Fatwa No. 11,489.

[106] From the Saaid.net website: www.saaid.net/Doat/assuhaim/fatwa.

To do so is to follow the practice of unbelievers, because this is a tradition of theirs. However, some ignorant Muslims have followed suit. Such a practice displays ingratitude to one's family on the part of the woman, and this is contrary to dutifulness and good morality. Referring to Mary, God mentions her father's name: 'And Mary, the daughter of [Imran, who guarded her chastity; and We breathed of Our spirit into her. She accepted the truth of her Lord's words and His revealed books. She was truly devout.' (66: 12) No one ever had a superior status to that of the Prophet, both in God's sight and among people, yet his wives were not identified by his name but by belonging to their fathers. They are called: [A'ishah bint (i.e. daughter of) Abu Bakr, Hafsah bint [Umar, Zaynab bint Jahsh, etc. When a woman is mentioned along with her husband she is stated to be his wife but not belonging to his own family, as in the verse that says: 'God has given examples of unbelievers: Noah's wife and Lot's wife. They were married to two of Our righteous servants but betrayed them. Their husbands could be of no avail to them against God. They were told: "Enter both of you the fire with all those who will enter it."' (66: 10) She may be identified as her husband's wife, but she is always stated to be the daughter of her own father.

The second view is a ruling by the Egyptian Dar al-Ifta, stating that this is a tradition that is not contrary to Islamic jurisprudence and it is not undertaken as following the traditions of the unbelievers, nor is it a form of the forbidden practice of affiliating oneself to someone other than one's father.

Evidence

Western tradition affiliates an unmarried woman to her father and her family. When she is married, her husband's family name is added to her own and she is given a title indicating that she is married, such as Mrs, Madam, etc. Thus, the addition of the husband's family name to his wife's name is like when we say in our language that a woman is married into this family or the other.

Moreover, to them it is a kind of identification that causes no confusion. Needless to say identification has many ways, such as by service as in the case of [Ikrimah, Ibn [Abbas's servant; or by profession, as in the case of al-Ghazali; or by description, as in the case of al-A[raj (i.e. 'the lame') and al-Jahiz (i.e the man with protruding eyes); or by fatherhood, as in the case of Abu Muhammad al-A[mash; or by being attributed to one's mother despite his father being known, as in the case of Isma[il ibn [Ulayyah; or by marriage, as mentioned in the Qur'an in identifying women by mentioning to whom they were married, as in 'Noah's wife and Lot's wife' (66: 10) and 'Pharaoh's wife.' (66: 11)

An authentic *hadith* mentions that 'Ibn Mas[ud's wife sought permission to see the Prophet. He was told: "Messenger of God, here is Zaynab who wishes to see you." He asked: "Which Zaynab?" They said: "Ibn Mas[ud's wife." He said: "Yes, admit her." She was admitted.' (Related by al-Bukhari and Muslim)

What is forbidden in Islam is that a person should affiliate himself to someone as though he is that person's son when his father is someone else.

Some of these forms of identification may become common in some places or situations, and it may become a social tradition. There is nothing wrong with that as long as it does not imply affiliation of the sort that Islam rejects, which is implying being the child of someone who is not one's parent. Nor is this practice considered an imitation of other people, which is not acceptable in Islam. Such imitation is forbidden if it involves something forbidden and is intended as imitation. If either condition does not apply, then the action itself is not to be criticized.

This is clarified by the *hadith*: 'The Prophet was once ill, and we prayed behind him when he was praying seated. He looked at us and saw that we were standing up behind him. He pointed to us and we sat down. When he finished his prayer, he said to us: "You almost did what the Persians and the Byzantines used to do: they would stand in attendance while their kings were seated. Do not do that, but do as your leader does: if he prays standing up, then stand up; and if he prays seated, then pray seated."' (Related by Muslim, *hadith* No. 624) Needless to say, when 'almost' precedes a statement, it means that the action itself was close to being done. The Persians and Byzantines did what the Prophet said, but his companions did not intend to copy them and imitation did not apply in this instance. Ibn Nujaym, a leading Hanafi scholar, said in his book *Al-Bahr al-Ra'iq*: 'Know that imitation of the people of earlier revelations is not always to be criticized. We eat and drink as they do. What is forbidden is imitating a reprehensible action with the intention of imitation.'

To add a husband's family name to his wife's name does not negate her affiliation to her father, but it is merely done for identification. The confusion that has led to people saying that it is forbidden is due to the fact that the word 'ibn', i.e. 'son of', is frequently omitted when one's name is mentioned together with one's father's name. Yet this is due to the frequency of its omission and people like to make things easier. The omission has led to confusion when one has more than one name. Therefore, because the omission of 'ibn' has become standard some countries issued an order to give a child only one name so that no confusion can arise. Hence those who object to adding the husband's family name to his wife may be influenced by this standard practice that may lead to confusion about parenthood. The case is different in the case of a wife and her husband's family name because of the use of what indicates her being a married woman, such as Mrs, Madame, etc. Since this tradition is not contrary to Islam, there is nothing to prevent it. Islamic jurisprudence upholds tradition, unless it is contrary to its values, and refers to it. A general rule considered by Islamic scholars says: 'Tradition is upheld'. Muslims have not been called upon to rebel against tradition or contradict it. On the contrary, they need to live in their community and be part of such communities, but without contradicting any of the main principles of Islam.

Sources

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50. ADOPTION IN WESTERN COUNTRIES

Similar Questions

- Paper adoption.

The Issue

It happens in some Western countries that a Muslim may take a child with unknown parents. The law of adoption in the West obliges him to give the child his own family name, but Islam forbids that a person should affiliate himself to anyone other than his own father.

Ruling

The Assembly of Muslim Jurists of America has approved the adoption of Muslim children and going through the necessary procedures, provided that the relationship remains one of looking after the child, not the forbidden formal adoption. The concluding statement of the second convention of the Assembly of Muslim Jurists of America stated under the heading related to the ninth topic discussed in the convention, namely, the adoption of immigrant Muslim children outside the Muslim world that there is an urgent need to look after orphans and children of unknown parenthood. The statement explained that looking after such children earns rich reward from God. It draws a clear distinction between looking after children in this way and adoption, in its non-Islamic sense, which affiliates a child to someone other than its own father. Adoption in this sense is strictly forbidden under Islamic law. However, if it is the only way to save Muslim children outside the Muslim world and prevent their adoption by non-Muslim groups, a concession is granted. The adoption may be put in place, taking the formal measures, provided that the necessary steps are taken to clearly identify the relationship as one of care and upbringing and prevent any confusion about family relations.

Evidence

The Prophet says: 'I and the one who takes full care of an orphan shall be in heaven like these two (he pointed with his forefinger and middle finger separating them a little).' (Related by al-Bukhari, *hadith* No. 5,304) Islam considers taking full care of such children a duty of the Muslim community so that its children are not lost or taken over by unreliable or unqualified people. If the child is called after its own father, or given a different name that applies to it, there is nothing wrong with this but when it grows up the child should be told the facts and informed of its real family and full identity, as well as the nature of the relationship with the family that looked after it, so that all problems are thus avoided.

If the person who has looked after the child wants to help it after it has become an adult, he may give him or her a bequest by will, provided that the total of such bequests does not exceed one-third of his estate. In this way he helps the child without affecting his heirs. Islam allows a Muslim to make a will leaving up to one-third of his property to beneficiaries who are not his heirs.

It has been pointed out that the law in America requires the carer of the orphan to give that orphan his own family name. In this case this name should be added to the child's name and its father's name, or the other name the child has been given. All this should be recorded in a document that should be kept by the family. When the child grows up it should be informed of what had taken place. Thus, the carer will not be legally accountable and at the same time has remained within the limits of Islamic law which requires preserving everyone's family lineage.

The name of the family taking care of the child may be attached to the child in such a way that some people cannot identify him or her by any other name. Therefore, calling it by that name in this particular way is not considered a sin. Names are used to identify people and when identification is not possible unless such a name is used then it is appropriate, God willing.

Therefore, we appeal to all Muslims who can look after such children not to leave them to a life of poverty, homelessness and loss of identity and religion. Those who are able should take steps to look after such children, whether they are Iraqis, Somalis, Bosnians, Afghans or belong to any other area in the Muslim world. Only in this way can Muslims discharge their responsibility towards those who seek refuge after having endured different calamities. God will certainly reward everyone who does good. He says: ‘Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.’ (5: 2)

Sources

- Home page for the website Islam Online: www.islamonline.net.
- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.

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51. REGISTERING BIRTHS IN NON-MUSLIM REGISTERS

Similar Questions

- Registering births in the registers of non-Muslim governments;
- Certifying birth certificates in non-Muslim countries.

The Issue

Children are born to Muslim families living in non-Muslim countries and the child's birth is required to be documented in the official registers of these countries. What is the ruling concerning this?

Ruling

There is no problem in registering births and the issuing of birth and death certificates by the authorized departments in any country. Indeed, this is required because it is of general benefit. Documentation has become a necessity, and it is impossible to have any official transaction without such documentation.

Evidence

The permissibility of the registration of births and deaths with the official authorities should be considered in the same way as the registration of marriages and divorces. *Fiqh* councils and websites have discussed the question of documenting marriages and divorces in Western countries, but have not mentioned the question of registering births and deaths. Needless to say, the latter is as important and urgent as the registration of marriages and divorces, if not more so. The fact that such registration is needed and that there is nothing in Islam to prevent it is sufficient evidence of its permissibility.

A question may be asked whether such documents may be relied upon in proving parenthood. We have not found any clear statement by contemporary scholars concerning reliance on such documents. However, they are practically relied upon in confirming parenthood and the establishment of rights. We do not know of anyone who objects to this.

Sources

- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.
- Islam Question and Answer: www.islamQA.info.
- Website of the Egyptian Dar al-Ifta: www.dar-alifta.org.

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52. ARTIFICIAL INSEMINATION

Similar Questions

- Insemination under the microscope;
- ‘Test-tube’ babies;
- Rulings concerning artificial insemination.

The Issue

This refers to pregnancy and childbirth using a procedure other than the natural one, i.e. without sexual intercourse between man and wife. It is done through what is called nowadays, artificial insemination. There are several different ways of achieving artificial insemination, some internal and others external to the woman’s body, and children born through these procedures were known as ‘test-tube babies’, because the insemination of the woman’s egg may be done outside the woman’s body in a receptacle often erroneously described as a test-tube.

Ruling

Artificial insemination is performed in different ways, some of which are lawful from the Islamic point of view, some unlawful and others hover in between prohibition and permissibility. What is lawful is that the sperm of the husband is used to inseminate the egg of his wife, without sexual intercourse, either inside the woman’s body or outside it. The fertilized egg is then put back into the woman’s uterus. When needed, there is nothing wrong with either of these techniques if the woman is unable to get pregnant in the natural way.

Forbidden procedures are those when the sperm of a man other than the woman’s husband is used, or when the egg is taken from a woman other than his wife, or when the husband’s sperm inseminates his wife’s egg but the fertilized egg is then placed in the body of another woman.

Procedures hovering between permissibility and prohibition are those such as a man being married to two wives and one of them is infertile. Consider the situation where an egg is taken from one wife and inseminated with the husband's sperm before placing it in his other wife's uterus. The permissibility of this procedure is questionable. However, caution makes many scholars more inclined to say that it is not permissible, because in matters related to sex and pregnancy, extra caution is required.

The Islamic *Fiqh* Council of the Muslim World League in Makkah undertook an in-depth study of artificial insemination, with all its internal and external procedures, and ultimately approved a decision that considered only two procedures permissible and all others forbidden. The two permissible procedures ensure that the sperm of the husband is used to inseminate the egg of his wife when they are actually married, and without the involvement of any third party. The decision is as follows:

One: General Rules

1. It is strictly forbidden for a woman to expose her body before anyone other than her husband with whom it is permissible for her to have sexual intercourse, except for a legitimate purpose that Islamic law considers to permit such exposure.
2. When a woman needs medical treatment for an illness, or an unnatural condition, or another complaint that troubles her, she may expose her body within the limits of what is necessary in order to have such treatment.
3. When there is a legitimate purpose allowing a woman to expose her body before someone other than her husband, the person administering the treatment should be a Muslim woman whenever this is possible. If not, it should be a non-Muslim woman. Otherwise a Muslim male doctor of integrity, and if not then a non-Muslim doctor. This order should always be considered. It is not permissible for the woman being treated and the person treating her to be alone. Her husband or another woman should always be present.

Two: Rulings on Artificial Insemination

1. The need of a married woman and her husband to have children when the woman is unable to conceive is considered a legitimate purpose, allowing her treatment with a permissible method of artificial insemination.
2. The first procedure, involving taking the sperm of a married man to inseminate the egg of his wife internally, is permissible from the Islamic point of view under the abovementioned conditions, provided that the woman's need to have such a procedure for conception is confirmed.
3. The third procedure, involving inseminating the wife's egg by her husband's sperm externally then implanting the fertilized egg in the uterus of the same wife who produced the egg is acceptable in principle. However, the conditions surrounding it do not make it free of doubt. Therefore, it must not be resorted to except in cases of absolute necessity, ensuring that the aforementioned general rules are observed.
4. In these two permissible situations, the Council decides that the child's parents are the two spouses who provided the sperm and the egg. The rights of inheritance and other rights of the child are confirmed once the parenthood is confirmed. Once this child is confirmed to be the child of the man and his wife, all rulings and rights, including rights of inheritance, apply to it.
5. All other procedures of artificial insemination, whether internal or external as already outlined, are forbidden in Islam. None may be considered permissible because they involve insemination without considering that the man and the woman are married. Moreover, the surrogate mother is unrelated to the couple.

Considering the general circumstances of artificial insemination, even in the two permissible procedures, and with the possibility of sperms and eggs fertilized externally being mixed up, particularly when this procedure becomes more common, the Council advises people not to resort to it except in cases of absolute necessity. They must take every precaution to prevent sperms and eggs being mixed up. This is the conclusion arrived at by the *Fiqh* Council regarding this issue of strong religious sensitivity. The Council prays that it has arrived at the right conclusion.[107]

Shaikh Jad al-Haq Ali Jad al-Haq, the former Rector of al-Azhar, was asked a detailed question about the use of artificial insemination. The following cases were mentioned in the question:

1. The husband's sperm is used to inseminate the egg of his wife who is unable to conceive otherwise, with both man and wife being present.
2. The sperm of a man other than her husband is used to inseminate a woman's egg, because her husband produces no sperm or because his sperm is unsuitable.
3. The husband's sperm is used to inseminate an egg produced by a woman other than his wife. The fertilized egg is subsequently implanted in the uterus of the man's wife. Such a situation might arise in the case of a woman who does not produce eggs.
4. A woman's egg is artificially inseminated with her own husband's sperm in a 'test-tube', because the woman cannot get pregnant. The fertilized egg is then either: (i) implanted in the uterus of the wife who produced the egg; or (ii) implanted into a suitable animal for a period of time and later the embryo is returned to the uterus of the same woman.
5. What is the status of the husband who agrees to use such procedures and claims the child born in one of these ways, or stays with his wife who used the sperm of another man to get pregnant?
6. What is the status of the child born by any of these methods?

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[107] This decision was adopted by the Council in its eighth session held in Makkah in 1405 AH, 1985.

Shaikh Jad al-Haq gave a detailed answer and said:

God says in the Qur'an: 'He it is who has created man from water and established for him bonds of lineage and marriage. All-Powerful is your Lord.' (25: 54) In this verse God makes clear that one of the blessings He has favoured man with is the establishment of bonds of lineage and marriage. He made these bonds the basis of what is permissible or prohibited in human relations. Since such bonds are aspects of God's blessings, the protection of offspring is one of the essential purposes of Islamic law. In this regard, al-Ghazali said: 'Procuring benefits and removing harm are the objectives of God and serve people's interests and purposes. What we mean by benefit is the protection of what Islamic law aims to safeguard for people: their faith, life, reason, offspring and property. Everything that helps to preserve these five essentials is a benefit and everything that adversely affects them is a harm and repelling such harm is a benefit.'[108]

In order to protect offspring, God has permitted marriage and forbidden fornication and adultery. He says: 'And among His signs is that He creates for you spouses out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you. In this there are clear signs indeed for people who think.' (30: 21) 'Do not come near adultery. It is indeed an abomination and an evil way.' (17: 32) A child that is born in a proper marriage grows up under the care of parents who try their best to give it the best upbringing, using all their resources for that purpose. An illegitimate child is hostile to its mother and her people and deprived of the care of a father. It is given the wrong upbringing and he becomes a burden to its community.

Scholars of Islamic law have discussed what should be done for such children, urging the community to ensure that they are well brought up. They have outlined rules and regulations that apply to them as they are human beings that must not be neglected. It is forbidden to insult or humiliate them and they should be given the opportunity to grow up as good people, with the hope that they will be of benefit to society. God says: 'Because of this did We ordain to the Children of

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[108] Abu Hamid al-Ghazali, *Al-Mustasfa*, vol. 1, p. 287.

Israel that if anyone slays a human being, for anything other than in punishment of murder or for spreading corruption on earth, it shall be as though he had slain all mankind; and that if anyone saves a human life, it shall be as though he had saved all mankind. Our messengers brought them clear evidence of the truth, but despite all this, many of them continue to commit all manner of excesses on earth.' (5: 32)

Islam is keen to ensure that family relations are true and safe. Therefore, it encourages marriage and puts in place detailed laws and regulations to ensure the stability of the family from the moment of one's birth to the moment of one's death. Generally speaking, Islam regulates human life in the best way, relying on wisdom and justice and ensuring people's interests.

As lineage and family are so important, Islam has put in place legislation that ensures that it remains correct and right, leaving no room for doubt and suspicion. The Prophet says: 'The child belongs to the marriage bed and the adulterer bites the dust.' (Related by al-Bukhari, *hadith* No. 2,053; Muslim, *hadith* No. 1,457) The *hadith* means that a child should be born into a proper marriage and the wife should bear her husband's child. It thus lays down an important rule for family life, ensuring the sanctity of proper marriage and confirming parenthood on this basis. If a married woman becomes pregnant through adultery or rape the child is affiliated to her husband, not to the adulterer or the rapist, because the proper marriage bed is in place.

Another aspect of the Islamic way of protecting family lines is the requirement that if a woman is divorced after the consummation of her marriage, or after she and her husband have been together in private, she should observe a waiting period before she can marry another man.

Islam categorically prohibits adoption, and the prohibition is clearly stated in the Qur'an. The prohibition applies when a person attributes to himself another person, in the same way as a child is attributed to its rightful parents, knowing for certain that this person is someone else's child. This is forbidden so as to keep family lineage correct and to preserve the rights of the family, as they have been regulated by Islamic law in accordance with the degree of relationship. God says: ‘Never has God put two hearts in one man’s body. Nor does He make your wives whom you declare to be as unlawful to you as your mothers’ bodies truly your mothers. Likewise, He does not make your adopted sons truly your sons. These are only words you utter with your mouths, but God says the truth and He alone shows the right path. Call them by their fathers’ names; that is more just in God’s sight. If you do not know who their fathers are then treat them as your brethren in faith and your protégés. You shall not be blamed if you make a mistake, but for what your hearts intend. God is indeed much forgiving, ever merciful.’ (33: 4–5) Thus Islam does not allow the affiliation into a family of one who does not belong to it, and it does not enforce attaching anyone to people who do not want it.

As Islam takes such care of family lineage and ensures that it remains safe, it regulates the relationship between man and woman, making clear that it must be within a proper marriage, so that man’s sperm that begins the conception of a child is kept pure. God says: ‘We have created man from a drop of mingled fluid, so that We might try him. Therefore, we have endowed him with hearing and sight.’ (76: 2) This drop of fluid does not begin to give shape unless it gets into the woman’s body which is ready to receive it. This may be through proper sexual intercourse. Thus, the child belongs to its father when the sexual intercourse is within a proper marriage. Alternatively, it may be through the implanting of the sperm into the woman’s uterus in a different way.

The first question said: ‘The husband’s sperm is used to inseminate the egg of his wife who is unable to conceive otherwise, with both man and wife being present.’ The ultimate purpose of the marital relation is procreation for the survival of mankind, and the physical relationship between the spouses responds to natural instincts. Thus this relationship and intercourse are the proper means through which they both give what is within them, enabling the sperm to find its place and be settled where God wants it to start its life cycle. This should be done by the means God has given each of the couple and it should be always maintained unless there is good reason for seeking a different method, such as either one of the married couple having an illness, or a natural condition that prevents conception in the natural way. In such a case, and the wife has artificial insemination with her husband's own sperm without any doubt about its source or its mixing with any other human or animal sperm, such insemination is permissible. Thus, the child definitely belongs to the woman's husband. The case is analogous to that mentioned by early scholars who make clear that if a woman inserts her husband's sperm into her vagina the child is her husband's child, and if she is divorced or widowed she must observe the normal waiting period.

The second question puts the following case: 'The sperm of a man other than her husband is used to inseminate a woman's egg, because her husband produces no sperm or because his sperm is unsuitable.' This is certainly forbidden because it leads to confusion of parenthood, affiliating a child to a man when the child was not conceived with that man's sperm. Moreover, when such insemination leads to pregnancy, it carries shades of adultery as it produces the same results as adultery. Needless to say, adultery is strictly forbidden in the Qur'an and the Sunnah.

The third question says: 'The husband's sperm is used to inseminate an egg produced by a woman other than his wife. The fertilized egg is subsequently implanted in the uterus of the man's wife. Such a situation might arise in the case of a woman who does not produce eggs.' This procedure also carries shades of adultery, and like adultery it leads to confusion of family relations. This is something Islamic law is firmly against. Islam wants family relations clear and true, moving them away from adultery and all that may be associated with it. It is true that in this case the sperm is taken from the husband, but the sperm does not produce anything on its own. It only starts the cycle of life by God's will when it inoculates the wife's egg. In this case the wife's egg is missing and is replaced by an egg taken from another woman. As such the wife is not the husband's tilth, as wives are described in the Qur'an: 'Your wives are your tilth; go, then, to your tilth as you may desire, but first provide something for your souls. Fear God and know that you shall meet Him. Give the happy news to the believers.' (2: 223) A woman should only be made pregnant as a result of legitimate relations with her husband, either through intercourse with her or by her insemination with his sperm and the fertilized egg implanted in her own uterus so that the child develops and grows in the natural way. As God describes: ‘He has created you all from a single soul and from it He fashioned its mate; and He has bestowed on you four kinds of cattle in pairs; and He creates you in your mothers’ wombs, one act of creation after another, in threefold depths of darkness. Such is God, your Lord: to Him belongs all dominion. There is no deity other than Him. How, then, can you lose sight of the truth?’ (39: 6) Since the fertilized egg in this case does not belong to the wife, then the resulting pregnancy is not by the married couple: it is by the husband and a woman with whom it is not lawful for him to consort. There is no situation of tilth in this case, either real or conceptual. As such this case is like the previous one: they are both akin to forbidden adultery.

The fourth question cites the following case: ‘A woman’s egg is artificially inseminated with her own husband’s sperm in a “test-tube”, because the woman cannot get pregnant. The fertilized egg is then either: (i) implanted in the uterus of the wife who produced the egg; or (ii) implanted into a suitable animal for a period of time and later the embryo is returned to the uterus of the same woman.’

In the first of these cases it should be clear and certain that the egg belongs to the wife and the sperm to her husband. When the insemination takes place in a test-tube and then the fertilized egg is implanted in the wife’s uterus it must be certain that there is no mix-up or substitution of the husband’s sperm with the sperm of any other person or animal. If there is a medical need for using this procedure, such as either spouse having some illness or condition that prevents their having normal intercourse, and a competent doctor advises that this procedure is the right way for the wife to get pregnant, it is permissible. However, it must be ascertained that the test-tube used for the fertilization of the egg is the right one. Having children is a blessing, and when pregnancy is prevented by some cause that can be treated or overcome such treatment is perfectly permissible, and may even be a duty in some cases.

A Bedouin asked the Prophet: ‘Messenger of God, should we seek medical treatment?' The Prophet said: 'Yes. God has not created an illness without creating a cure for it, and the cure may be known to some and unknown to others.' (Related by Ahmad, *hadith* No. 3,578)

Like the procedure mentioned in the first question, this method is a type of medical treatment which is perfectly permissible as long as it does not involve anything forbidden. Indeed, medical treatment may be a duty when it leads to the preservation of life or curing a spouse's sterility.

The other alternative in this question posits implanting the fertilized egg in a suitable female animal for a while which replaces the wife. The Qur'an refers to the stages of development of an embryo from the moment of conception. God says: 'Indeed, We create man out of the essence of clay, then We place him, a gamete, in a safe place of rest. Then We create out of the gamete a clinging cell mass, and out of the clinging cell mass We create an embryo. Then We create within the embryo bones, then We clothe the bones with flesh. We then bring this into being as another creation. Exalted be God, the best of creators.' (23: 12–14) However, the question involves using a female animal to host a woman's egg that has been fertilized by her husband's sperm. When this egg goes through these stages, this creature will acquire some of the qualities or forms of the animal that provides it with nourishment. Indeed, it becomes part of its animal host. If it remains there until fully developed it will be a different creature when born. We need only think of a donkey copulating with a mare. The pregnancy results in a totally different animal which is neither a donkey nor a horse.

This is true if the fertilized egg remains in the animal until it is born. If the embryo is taken out after a short time and is implanted in the wife's uterus, it will have acquired some of the qualities of the animal host and will have lost some human characteristics. The hereditary element is operative in animal and plant species, and features are borrowed from one species to another and then from one generation to another. Islam referred to this before it was scientifically proven. God says: 'How could it be that He who has created should not know all? He is indeed Most Gracious, All-Aware.' (67: 14)

This is indicated by the Prophet's advice in relation to the choice of spouses. He said: 'Be selective with regard to your wives and marry [your women to] those who are acceptable.' (Related by Ibn Majah, *hadith* No. 1,968) He also says: 'Stay away from a pretty woman in an evil environment.' (Related by al-Daraqutni)

Thus the fertilized egg that is implanted in the uterus of a female animal will take from its host qualities and characteristics if it manages to survive and be born. Although such a creature is born with a human form it will not be a normal human being. To go through this is to pervert God's creation.

One of the rules established by Muslim scholars, on the basis of the objectives of Islamic law, is that the prevention of harm takes priority over securing benefit. Islamic law focuses more on preventing what is forbidden than the fulfilment of what is obligatory. God says: 'Remain God-fearing as best as you can, listen, obey and be charitable.' (64: 16) The Prophet says: 'Do the best of whatever I bid you to do, but desist from anything I forbid you.' (Related by Muslim, *hadith* No. 1,337) Since conception in this way leads to much harm, then it is forbidden to pursue this procedure.

The fifth question asks: 'What is the status of the husband who agrees to use such procedures and claims the child born in one of these ways, or stays with his wife who used the sperm of another man to get pregnant?'

We have already said that artificial insemination with the procedure mentioned in the first question or the one described in the first method in the fourth question is permissible. The conditions that need to be fulfilled are that the woman's egg should be fertilized by her husband's sperm and that there is real need to follow such procedures because pregnancy cannot take place through the natural method. We also mentioned that all other methods described are forbidden in Islam, either because they are akin to adultery or because of the harm they cause.

Therefore, it is forbidden for a husband to claim a child that was conceived through any of the forbidden procedures. Such a child is not his child, either because there is doubt about his being the child's father or because there is certainty that he is not its father, since the sperm used in such procedures is taken from someone else. Indeed, claiming such a child is worse than adopting someone else's child and giving it one's own name since in these procedures there is an element of adultery. A husband who accepts that his wife conceives using someone else's sperm, either through adultery or through a procedure that has an element of adultery, loses his dignity. The same applies to a husband who stays with a wife that has conceived through any of these forbidden procedures. Islam forbids these because it wants mankind to keep their noble status and purity. As for adopting someone else's child and giving it one's own family name, this is strictly forbidden as the Qur'an clearly states.

The sixth question asks about the status of the child born by any of these ways. In answer we say that any child conceived through any of the forbidden procedures is considered fatherless. It is affiliated only to its mother, as she has given birth in the natural way, and it is like a child born through an adulterous relationship. In this respect we remind spouses of the *hadith* reported by Abu Hurayrah, who quoted the Prophet as saying: 'Any woman who introduces into a community a child who does not belong to them is rejected by God and He will not admit her into heaven. Any man who denies a child he knows to be his own shall be screened from God and God will proclaim his deed to all generations of mankind.' (Related by Abu Dawud, *hadith* No. 2,263; al-Nassa'i, *hadith* No. 3,481)

The Egyptian Dar al-Ifta responded in 2005 to a question put by a woman who wanted to have a child through artificial insemination but her husband refused because he thought it is forbidden in Islam. Doctors said that there was no medical reason why the lady could not get pregnant in this way. In its response, Dar al-Ifta said that certain conditions must be met for artificial insemination to be permissible. The most important of these are that the egg is the wife's egg and it must be inseminated by her husband's sperm, and that the fertilized egg must be implanted in the uterus of the woman it was taken from. If any of these conditions is not met, as in the case of taking the egg from a different woman or the sperm from a man other than her husband, or if the fertilized egg is implanted in another woman's uterus, then the whole process is forbidden because it will then confuse family relations, encroach on rights and deviate from upright human nature. As such, the prohibition is clear.

It should be pointed out that the woman's request that her husband should help her in this regard and go through artificial insemination is reasonable and there is nothing wrong with it. It certainly does not constitute objection to God's will.

Sources

- Decisions by the Islamic *Fiqh* Council.
- Fatawa of al-Azhar.
- Fatawa of the Egyptian Dar al-Ifta.
- Shaikh Ibn Uthaymeen, *Fatawa*.
- Atiyyah Saqr, *Mawsu[at al-Usrah taht Ri[ayat al-Islam*.
- Decision by the International Islamic *Fiqh* Assembly.

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53. TRADITIONAL MARRIAGE NOT REGISTERED WITH WESTERN AUTHORITIES

Similar Questions

- Marriage not registered with Western courts;
- Traditional marriage in the West;
- Marriage without official registration.

The Issue

Two cases apply here: (i) A man and a woman agree to get married without the presence of the woman's guardian or witnesses; and (ii) going through a marriage contract in a Western country without registering it officially.

Ruling

The first case is not a marriage. It is adultery.

The second case is a marriage that is valid from the Islamic point of view, but involves several negative aspects. Rights may be squandered as a result of non-registration, and several social problems may affect both parties. Here are some of the decisions and fatwas about traditional marriage.

The European Council for Fatwa and Research considered the issue of traditional marriage in its twentieth session held in Turkey in June 2010 and took the following decision:

1. 'Traditional marriage' means a marriage contract that fulfils all the essentials and conditions of Islamic marriage but is not registered with the official authorities.
2. The Council recommends that neither traditional marriage

nor civil marriage is sufficient on its own and both should be performed. A traditional marriage contract on its own may lead to the loss of the rights of one or both of the parties, because it is not officially registered. The civil marriage may involve a lack of some essential requirements or conditions of the traditional marriage. Moreover, it may have consequences that are contrary to Islamic law.

3. A combination of the traditional and civil contracts, without reconciling their regulations and effects, may also lead to problems. If a dispute arises between the couple, people may want to refer to either one law or the other.

   Therefore, the Council recommends the formation of a committee of scholars and lawyers to draft a document to be attached to the civil marriage.

The Assembly of Muslim Jurists of America organized a seminar on ‘Contemporary Problems of the Muslim Family in American Society’, 26–28 Safar 1425 AH, 16–8 April 2004, which was attended by more than 30 imams from different areas around the western coast of the United States.

‘Traditional marriage’ is a marriage that has not been registered in an official document, whether the marriage is in written form or not. It is of two types:

The first type is a marriage that fulfils all essentials and conditions, including the presence of the woman’s guardian and witnesses. This is a correct and valid marriage that confirms the marital relationship and all that results from it such as the rights of looking after one’s wife, inheritance, the legitimacy of the children and their affiliation to their parents. Official registration is neither essential for the legitimacy of the marriage nor a condition of its validity. It has been introduced to ensure the rights of the parties in the case of dispute.

Although this marriage is valid it is strongly discouraged, because it leads to ignoring some of the woman’s rights in the case of any dispute and the courts will not consider a lawsuit on its basis. Claims of maintenance or inheritance and applications for dissolution due to harm, etc. are not considered because the marriage has not been officially registered, as required by many contemporary family laws.

The second type is a marriage that does not meet the essential requirements, such as a ceremony performed in secret without the presence of the woman's guardian or witnesses. Although this type has recently become common in some countries, the arrangement is invalid and does not create a marital relationship that makes the parties lawful to each other. Scholars must warn against it and declare its invalidity.

IslamWeb Fatwa centre[109]

In most cases, traditional marriage refers to a marriage that is not registered with the official authorities. If such a marriage fulfils the essentials and conditions, and is free of any reason that makes it unlawful for the two parties to marry, then it is a valid marriage, even though it is not officiallly registered. This may result in many unnecessary problems. The purpose of registering the marriage is to ensure the rights of each of the two parties and document these, as well as confirming the correct affiliation of children to their parents, etc. Moreover, it ensures that injustice or assault, if any, is removed. On the other hand, either the husband or the wife may be able to shred or burn any document proving the traditional marriage and then deny being married to the other. Such excesses are not infrequent. Whether the marriage is traditional or official it must fulfil the essentials and the conditions of the marriage contract, otherwise it will not be valid. The most important of the essentials are the commitment and acceptance.

Evidence

The most important conditions are the presence of the guardian, two witnesses and the dowry. The Prophet says: 'No marriage may be performed unless the guardian and two witnesses of integrity are present.' This *hadith* is related by Ibn Hibban in his *Sahih* anthology (number 4,075) on [A'ishah's authority. Ibn Hibban adds that this is the only authentic statement requiring two witnesses. Ibn Hazm grades this *hadith* as authentic. Another *hadith* quotes the Prophet as saying: 'Any woman who marries without the consent of her guardian, her marriage is invalid (the Prophet repeated this three times). If they have intercourse, she is entitled to the full dowry for having permitted her partner to have intercourse with her. If they are in dispute, then the ruler is the guardian of the one without a guardian.' (Related by al-Tirmidhi, *hadith* No. 1,114; Ibn Majah, *hadith* No. 1,879).

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[109] The fatwa carries number 5,962 and was published on the website on Monday 3/12/1424 AH, 26 January 2004.

The dowry is a definite requirement, as God says: 'Give women their dowries as a free gift; but if they, of their own accord, choose to give up to you a part of it, then you may take it with pleasure.' (4: 4) The Prophet said to a man who requested him to perform his marriage to a certain woman: 'Give her something, even though it may be a ring made of iron.' (Related by al-Bukhari, *hadith* No. 5,029; Muslim, *hadith* No. 1,425)

Therefore, we urge our Muslim brothers to stay away from traditional marriage and to ensure that their marriage is true, official and properly registered and documented. We warn against a forbidden method that some people resort to: a man and a woman meet, he asks her to marry him and she says that she accepts. They write a paper stating that they have done this, consider themselves married and live like husband and wife. This method is not a marriage of any sort and definitely not a traditional marriage. It is an adulterous relationship, as it takes place in the absence of the woman's guardian and witnesses. Whoever has done this must repent and seek God's forgiveness. If he wants to be married, he should marry his wife according to the proper conditions laid down by Islam.

Sources

- Decisions by the European Council for Fatwa and Research.
- Home page for IslamWeb.net website: www.islamweb.net.

53. MARRIAGE BETWEEN A SUNNI MAN AND A SHIA WOMAN

Similar Questions

- Marriage of a Sunni woman to a non-Sunni man;
- Marriage of a Shia man to a Sunni woman.

The Issue

A Shia man may come to a Sunni woman with a proposal of marriage. Is such a marriage permissible?

Ruling

This is not a new question, but some people in Muslim minority communities may need it, as followers of deviant creeds live in the same countries and they mix with Muslims. A Shia man who is fanatically committed to the Shia beliefs may not be married to a Sunni woman. If he merely affiliates himself to the Shia, without sharing these beliefs, some contemporary scholars permit his marriage to a Muslim woman.

The fatwas

Ibn Taymiyyah was asked whether it is permissible to intermarry with al-Rafidah, the name given to the Shia in classical works. His answer was: ‘The hard-line al-Rafidah are people of deviant creeds and they go astray. A Muslim must not give a woman under his care to such a man in marriage. If he marries a woman from among them, his marriage is valid if he hopes that she will mend her ways. Otherwise, it is preferable not to marry such a woman so that she will not influence his children.’[110]

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[110] Ibn Taymiyyah, *Majmu[al-Fatawa*, vol. 32, p. 61.

The Fatawa of the **Permanent Committee for Research and Fatwa** includes fatwa No. 2,165, which replies to the question: ‘What is the verdict on marriage to someone who belongs to al-Rafidah? If it takes place, what should be done?’ The fatwa says: ‘It is not permissible for a Sunni man to marry a woman from al-Rafidah and if such a marriage takes place, it must be dissolved. It is well known that they appeal to dead members of the Prophet’s household and seek their help. This is an aspect of clear polytheism.’

The late **Shaikh Muhammad Rasheed Rida** said that the marriage between a Shia man and a Sunni woman is valid. The Sunnah people pride themselves on the fact that they do not label as unbeliever anyone who offers Islamic prayers. If any subscribe to notions that belong to disbelief, this is due to how they interpret it. The Sunnah scholars have declared the Shia as believers, because the differences with them are not related to the essence of belief and disbelief. Therefore, a Shia man is a Muslim who may marry any Muslim woman.

When we consider the backwardness and weakness that engulf Muslims today, we realize that this is due to a large extent to the enmity between different schools. Most of all we need to unite and strengthen our ties. Therefore, today intermarriage between different sects is necessary, particularly because Muslims now feel that they were wrong to stay apart from each other, and intermarriage is a great factor towards promoting unity.

Sources

- Ibn Taymiyyah, Majmau[al-Fatawa.
- Muhammad Rasheed Rida, *Fatawa*, Beirut.
- Yusuf al-Qaradawi, *Fatawa Mu[asirah*.
- Fatawa on www.islamweb.net.

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55. WHO IS THE GUARDIAN OF A MUSLIM WOMAN WITH NO MUSLIM RELATIVES?

Similar Questions

- For a Muslim woman whose relatives are not Muslims, who acts as the guardian in her marriage?

The Issue

A Muslim man may wish to marry a Muslim woman, but her parent or guardian is non-Muslim. Alternatively he may or may not be the follower of a divine religion. In this case, can she act for herself in her marriage?

Ruling

All scholars agree that the proper thing for a woman who is to be married is that her guardian should act for her in marriage. The question arises when her guardian is a non-Muslim: can he act for her? Scholars have two different views on this point:

The first view is that it is not permissible. The evidence for this view is from the Qur’an, as God says: ‘Never will God allow the unbelievers a way over the believers.’ (4: 141) Needless to say, a guardian has authority over a person in his care. God also says: ‘The believers, men and women, are friends to one another: They enjoin what is right and forbid what is wrong; they attend to their prayers, and pay their zakat, and obey God and His Messenger. It is on these that God will have mercy. Surely, God is Almighty, Wise.’ (9: 71) If the woman does not have a Muslim guardian, she may appoint someone to act for her in her marriage, or she may act for herself if she is known to be of sound mind. This last point is approved by some prominent scholars such as Abu Hanifah.

The second view allows a non-Muslim guardian to act for a woman in her marriage if she has no Muslim guardian. This is the view of the Permanent Committee for Research and Fatwa in Saudi Arabia. The Committee replied to a question about a Muslim who married a Christian woman without permission from her guardian. It said: ‘The marriage contract is not valid unless it is done in the presence of the woman’s guardian and two witnesses of integrity. A woman may not act for herself in her marriage contract. The Prophet says: “No marriage is valid without [the woman’s] guardian and two witnesses of integrity.” He also says: “A woman may not act for another woman in her marriage contract, and a woman may not act for herself.” Therefore, the marriage contract referred to in the question is invalid and must be re-done by the woman’s guardian. A woman who follows a divine religion may be given in marriage by her father, and if he is unavailable or he refuses, then her next of kin. If she has no relatives, or they refuse, then a Muslim judge may act for her. If no such judge is available, then the Director of the Islamic centre in her area. Evidence from the Qur’an and the Sunnah confirm this.’

Fiqh Councils

The fourteenth session of the European Council for Fatwa and Research held in Dublin from 14–18 Muharram 1426 AH, 23–27 February 2005 discussed many topics, including ‘guardianship in marriage.’ Its discussions led to the adoption of the following decision:

> ‘Scholars have two different views with regard to guardianship in marriage. The first view considers the presence of the woman’s guardian a condition for the validity of the marriage. This view relies on the *hadith* reported by Abu Musa al-Ash[ari quoting the Prophet as saying: “No marriage is valid without a guardian.” Al-Bukhari uses this *hadith* as a chapter heading in the section on marriage in his *Sahih* anthology. It is indeed the view of the majority of scholars of both *hadith* and Islamic jurisprudence. Some of them go further than that, saying that it is a condition of the contract. The second view suggests that it is not a

condition, and a marriage contract without the presence of the woman's guardian is considered valid, provided that she marries a man of acceptable social status. This is the view of some scholars, particularly the Hanafi school of *Fiqh*. They cite other evidence in support.

'These views rely on good evidence. Having discussed the matter thoroughly, the Council decides that both from the religious and the social perspectives the consent of the woman's guardian should be keenly sought. However, if circumstances make it necessary for the woman to be married without her guardian's presence, either because he is unwilling or refuses to give his consent, then the marriage may go ahead. This is according to the views of scholars who do not make the guardian's consent a condition for the validity of the marriage. If the marriage contract goes ahead without the presence or consent of the guardian it is a valid marriage contract, upholding this view.

'The Council makes clear that not every relative is appropriate as a guardian to give a woman in marriage, there are certain conditions that need to be met. One of the most important of these is that his action should serve, not go against, her interests.'

IslamWeb published its fatwa No. 6,564 in answer to the following question: Is it permissible for a chaste Christian woman to act for herself in marrying a Muslim, without the consent of her Christian guardian?

Answer: It is not permissible for a chaste woman who follows a divine religion to marry a Muslim without the consent of her guardian, who also follows a divine religion. This is because the Prophet's *hadith* says, 'No marriage is valid without a guardian,' which is general in its import and applies in all cases. Ibn Qudamah said: 'If a Muslim marries a woman who belongs to another divine religion, her guardian, who is an unbeliever, acts for her in this marriage. This is mentioned by Abu al-Khattab and it is the view of both Abu Hanifah and al-Shafi[i. He is her guardian and, and as such, he is the one to give her in marriage is valid, just as if he marries her to an unbeliever. As such a woman has a suitable guardian, no one else may act as her guardian.'

Sources

- Fatawa by the Permanent Committee for Research and Fatwa.
- Decisions by the European Council for Fatwa and Research.
- Home page for IslamWeb.net website: www.islamweb.net.

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56. COMPATIBILITY OF AN ILLEGITIMATE PERSON

Similar Questions

- Marriage to an illegitimate person.

The Issue

In non-Muslim countries those born outside wedlock and who do not know their fathers are numerous. Such a person may come with a proposal of marriage to a woman of a good family. What is the ruling on such a marriage?

Ruling

Scholars of olden days discussed the question of social compatibility and whether it is a condition for the validity of marriage and pointed out the differences in this regard. They discussed the issues that determine compatibility, such as faith, freedom and family line. They mentioned that only a Muslim man has the social compatibility to marry a Muslim woman, and only a free man can marry a free woman. Some scholars discourage marriage to an illegitimate person altogether.

Marriage to an illegitimate person is perfectly permissible because he cannot be blamed for the adultery of someone else. *Fiqh* councils have not discussed the subject of the compatibility of such a person but have discussed the general question of compatibility. In its decision 1/14 on the matter, the European Council for Fatwa and Research says:

Having thoroughly discussed the paper presented on ‘compatibility in marriage’, the Council adopts the following decision:

1. Compatibility between husband and wife ensures a good family relationship and continuity of married life without estrangement or problems due to social and environmental differences.
2. Islamic law has combined what some societies uphold as differences that influence family stability with its own values

and ideals that make God-fearing, moral behaviour and earned good qualities the basis of honour. It confirms its aim to gradually end those differences while enhancing the value of good action and God-fearing, achieving all this through correcting behaviour, reform and wisdom.

3. The work of scholars of Islamic jurisprudence with regard to the qualities that influence compatibility has always looked at current social values, as these influence marital and family relations. However, their work has always stressed that good personal behaviour replaces traditional social compatibility.
4. There is no disagreement that the top element in compatibility is being religious.

The late Shaikh Abd al-Azeez ibn Baz was asked about a man who married his daughter to someone who was then confirmed to be born illegitimate. He answered: 'If the man is a Muslim the marriage is valid, because he bears no blame for his mother's sin or for the sin of her partner in adultery. God says: "Say: 'Am I, then, to seek a lord other than God, when He is the Lord of all things?' Whatever wrong any human being commits rests upon himself alone. No one shall be made to bear the burden of another. In time, to your Lord you all must return; and then He will tell you the truth of all that over which you were in dispute.'" (6: 164) If this husband follows the Islamic path and acquires good moral values and manners, no shame attaches to him through his parents' deed. God says: "Mankind! We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Truly, the noblest of you in the sight of God is the one who is most genuinely God-fearing. God is all-knowing, all-aware." (49: 13) The Prophet was asked about the noblest of people, and his answer was: "The most God-fearing among them." He also says: "Whoever is held back by his own deeds, cannot advance through his family lineage."

Sources

- The European Council for Fatwa and Research.
- Abd al-Azeez ibn Baz, *Fatawa*.

57. THE FAMILY LINE OF ILLEGITIMATE CHILDREN

Similar Questions

- Children born in adultery.

The Issue

In non-Muslim countries, many children are born outside of wedlock. A man may take a mistress with no marriage arranged between them and she may give birth to one or more children. To whom should such children be affiliated, and from whom do they inherit?

Ruling

The first view: An illegitimate child is affiliated to its mother and she inherits from the child if it dies. The majority of scholars are of the view that such a child cannot be affiliated to the adulterer who consorted with its mother.

The Assembly of Muslim Jurists of America

The Assembly confirms that maintaining correct family lineage is an important aim of Islamic jurisprudence and adultery does not confirm any legitimate lineage. However, a man may affiliate to himself a child of unknown family if he does not acknowledge that the child is born through adultery, and it could be his own child, provided that the child does not deny this if it is old enough to know.

The Permanent Committee for Research and Fatwa said in one fatwa: 'The right view expressed by scholars is that a child cannot be affiliated to the man who had intercourse with its mother unless this was based on a valid or invalid marriage, or on a suspect marriage [...]. In these cases, the child's family lineage with this man is correct and they inherit from each other. If the intercourse was one of adultery, the child cannot be affiliated to the adulterer. As such it does not inherit from him.'

In another fatwa the Committee said: 'An illegitimate child is affiliated to its mother. Its status is the same as all Muslims if its mother is a Muslim. It is not blamed or shamed for its mother's sin, or for the sin of the one who was her partner in adultery. These rulings confirm that wrong traditions are of no importance, as God says: "No one shall be made to bear the burden of another."' (6: 164)

The second view: It is permissible to affiliate an illegitimate child to the man who committed adultery with the child's mother, if he has been given the mandatory punishment for adultery.

Sources

- The Assembly of Muslim Jurists of America.
- Fatawa by the Permanent Committee for Research and Fatwa.
- The Kuwait *Fiqh* Encyclopaedia.

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SECTION 5: THE JUDICIAL SYSTEM

58. WORKING IN A MAN-MADE JUDICIAL SYSTEM

Similar Questions

- Taking up a judicial post in a non-Muslim country;
- Serving as a judge under an authority that does not judge according to God's revelations;
- Jury membership.

The Issue

A Muslim who lives outside the Muslim World may take up a judicial post or participate in some capacity in the process of administering justice under a non-Muslim authority.

Ruling

The basic ruling is that it is forbidden for a Muslim to serve as a judge under an authority that does not judge in accordance with God's revelations, unless serving in such a capacity is necessary to repel some grievous harm that may befall the Muslim community, to preserve rights, protect people's honour and property and to endeavour to administer justice to those who suffer injustice. A similar exception is considered when there is no legitimate alternative that is able to remove injustice and give people their rights; provided that whoever takes up such a judicial post should be well versed with Islamic law and should make his judgements according to it wherever possible. He should also be opposed at heart to the administration of a man-made law, considering lawful only those of its provisions that are in agreement with Islamic law.

It is permissible for a Muslim to sit on a jury with the intention of giving justice to Muslims and non-Muslims, provided that his own decision is in agreement with Islamic law.

It is a duty of Muslim communities to endeavour to settle their disputes within Islamic law. They should seek through legal channels to persuade the governments of the countries they live in to allow them to put disputes to their own tribunals that administer Islamic law, particularly in questions relating to personal and family law.

This was the view adopted by the Assembly of Muslim Jurists of America in the third decision of its second session and endorsed in the eighth decision of its fifth session.

Evidence

God has forbidden judgement in accordance with any law other than Islamic law. The prohibition is stated in many texts. Among the clearest of these texts are: 'All judgement rests with God alone.' (12: 40) 'But no, by your Lord! They do not really believe unless they make you judge in all disputes between them and then find in their hearts no bar to an acceptance of your decisions and give themselves up in total submission.' (4: 65)

The permissibility of the aforementioned situations is due to their being needful. This ruling remains within the area of what is exceptional and what is necessary.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Waleed al-Mineesi, 'The Permissible and the Forbidden in Judicial Work in non-Muslim Countries': a paper presented to the fifth annual convention of the Assembly of Muslim Jurists of America, held in Manama, Bahrain.

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59. PUTTING DISPUTES TO NON-ISLAMIC COURTS

Similar Questions

- Seeking judgement through the civil judicial system;
- Making pleas before civil courts;
- Putting disputes to courts of non-Muslim countries.

The Issue

Outside Muslim countries, when disputes arise between Muslims, or between them and non-Muslims, such disputes are put before courts that administer man-made laws.

Ruling

The basic principle is that disputes should be put before a legal system that implements Islamic law. Seeking judgement under any other law is unlawful except where there is no approved alternative that is able to remove injustice and give people their rights. In this case, the disputant should believe that such courts are non-Islamic and if their judgement gives him something that is not rightfully his, it is forbidden for him to take it. It is a duty of Muslim communities to endeavour to settle their disputes within Islamic law. They should seek through the legal channels to persuade the governments of the countries they live in to enable them to put their own disputes to tribunals that administer Islamic law, particularly in questions relating to personal and family law.

This ruling is expressed in Decision 8-5 of the Assembly of Muslim Jurists of America and Decision 91-8/9 of the International Islamic *Fiqh* Academy. It is also the ruling of the Permanent Committee for Research and Fatwa and was endorsed by the late Shaikh Muhammad ibn Uthaymeen, the late Shaikh Abd al-Razzaq Afeefi and several other scholars.

Evidence

Dispute settlement must be through the Islamic judicial system, as made clear in many religious texts such as the Qur'anic verses: 'But no, by your Lord! They do not really believe unless they make you judge in all disputes between them, and then find in their hearts no bar to an acceptance of your decisions and give themselves up in total submission.' (4: 65) 'Believers, obey God and obey the Messenger and those from among you who have been entrusted with authority. If you are in dispute over anything, refer it to God and the Messenger if you truly believe in God and the Last Day. This is the best [for you], and most suitable for final determination.' (4: 59)

All evidence regarding relaxing prohibitions to remove harm and address necessity indicate that putting disputes to courts administering man-made laws is permissible only in case of necessity when there are no courts to judge according to Islamic law. Necessity is limited to what is needful and may not be expanded or taken beyond its limits.

Putting disputes to civil courts in a case of necessity is similar to putting one's grievance to the police in order to obtain one's rights.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions of the International Islamic *Fiqh* Academy.
- Fatawa by The Permanent Committee for Research and Fatwa.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Fatawa and essays by Shaikh Abd al-Razzaq Afeefi.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- 'International Arbitration and Dispute Settlement from the Islamic Perspective': paper submitted to the ninth session of the European Council for Fatwa and Research held in Paris, France.
- Salah Abd al-Razzaq, *Al-Aqaliyyat al-Muslimah fi al-Gharb: Qadaya Fiqhiyyah wa Humum Thaqafiyyah*.
- Waleed al-Mineesi, 'The Permissible and the Forbidden in Judicial Work in non-Muslim Countries': a paper presented to the fifth annual convention of the Assembly of Muslim Jurists of America, held in Manama, Bahrain.

60. WORKING AS A LAWYER

Similar Questions

- Representing clients in courts in non-Muslim countries;
- Acting for a client in a dispute.

The Issue

A Muslim living in a country with a minority Muslim community may work as a lawyer or a barrister, putting his clients' cases before a civil court in order to remove injustice and obtain people's rights.

Ruling

Working as a lawyer is perfectly permissible, even in non-Muslim countries, if the lawyer is convinced that the case he is undertaking is just and legitimate. This view is endorsed by the Assembly of Muslim Jurists of America in its decisions 3-2 and 8-5. It is also the view expressed in Fatwa No. 3,532 of the Permanent Committee for Research and Fatwa. The Committee gave this ruling in answer to a question, stating: 'If working in the legal or judicial systems aims to establish rights, to prevent taking things through false claims, giving people what belongs to them and helping those suffering injustice, then it is perfectly permissible because it represents helping others in furthering righteousness and piety. Otherwise, it is prohibited because it then represents cooperation in furthering evil and aggression. God says: "Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression."' (5: 2)

Evidence

Whatever is permissible to do personally for oneself in seeking judgement is also permissible to do as an attorney. It has already been stated that it is permissible to put a dispute to a civil court when it is necessary to obtain one's rights or to prevent injustice. Therefore, it is permissible to work as a lawyer to demand the administration of what is right or to prevent injustice, after making sure that the case one is taking on is a just case. This will then be within what God has commanded the Muslim community to do, namely to help one another in doing what is right and pious. He says: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression.' (5: 2)

This question is closely related to that of putting disputes to civil courts, because when the lawyer presents his client's case he is acting as an attorney. What is permissible for an attorney is no more than what is permissible to the one giving him such power. Therefore, the permissibility is limited to what is necessary, as is the case in putting the dispute to such courts.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Waleed al-Mineesi, 'The Permissible and the Forbidden in Judicial Work in non-Muslim Countries': a paper presented to the fifth annual convention of the Assembly of Muslim Jurists of America, held in Manama, Bahrain.
- Fatawa by The Permanent Committee for Research and Fatwa.

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61. STUDYING AND TEACHING MAN-MADE LAWS

Similar Questions

- Specializing in man-made law;
- Teaching man-made law.

The Issue

Is it permissible for a Muslim living outside the Muslim world to study man-made laws that are at variance with Islamic law? Especially if to do so he needs to study law in a university and then specialize in such subjects. Is it also permissible for Muslims to teach man-made law to students?

Ruling

There is no harm in studying man-made laws that are contrary to Islamic law, or to teach these laws so as to learn about them and to see how Islamic law is superior to these, or to work as a lawyer with the aim of helping people suffering injustice and secure their rights for them. The only condition is that such a person should have enough knowledge of Islam and its law to ensure that he will not be helping others in furthering evil and aggression. This is the conclusion arrived at by the Assembly of Muslim Jurists of America in its second convention held in Copenhagen.[111]

This view is endorsed by the Permanent Committee for Research and Fatwa. In answer to a question about the permissibility of studying man-made laws, the Committee said: ‘If a student has good insight and knowledge to enable him to distinguish truth from falsehood and has solid Islamic conviction that ensures that he will not deviate from the truth or be tempted by falsehood, and if he wants to be able to show the superiority of Islamic law over all man-made laws and how

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[111] The Assembly of Muslim Jurists of America (AMJA): www.amjaonline.org.

Islamic law covers all that people need to put their life on the right footing, upholding the truth and abandoning falsehood, and to answer those who allege that man-made laws are perfect, comprehensive and sufficient, his study is perfectly permissible. Otherwise, it is not.'

The same view was expressed by Shaikh Abd al-Azeez ibn Baz who said that those who study man-made laws may be divided into three groups: the first includes people who study or teach such laws to understand their nature, who know the superiority of Islamic law and benefit by it in what does not contravene Islamic law or help others to so benefit. There is nothing wrong in that. Indeed, such a person may earn reward from God if he aims to explain the flaws of such laws and the superiority of Islamic law.

The second group includes those who study or teach man-made law to implement it or to help others to implement it, believing at the same time that it is forbidden to judge according to what is contrary to God's revelations. He is motivated by personal desire or the income he is likely to receive. This is certainly forbidden and whoever does it runs a great risk.

The third group includes those who study or teach man-made law believing that it is lawful to judge according to it, whether he believes that Islamic law is superior to it or not. Such people are unbelievers according to all Muslims. Considering it lawful to judge according to man-made law, which is at variance with God's law, means that he considers lawful what is essentially known to be forbidden in religion.

Evidence

In addition to what has been said earlier we may say in support of the permissible situation that studying man-made laws may be necessary in order to work as a lawyer in non-Muslim countries with the aim of supporting people suffering injustice, helping people to obtain what is rightfully theirs and to understand the superiority of Islamic law.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Abd al-Azeez ibn Baz, *Fatawa*.

62. ARBITRATION IN DISPUTES

Similar Questions

- Judging disputes within the Muslim minority;
- Settling disputes through arbitration.

The Issue

Muslims living outside the Muslim world may try to settle their disputes through arbitration and in accordance with Islamic law. In so doing they avoid putting their disputes to courts implementing man-made laws.

Ruling

Muslims living in non-Muslim countries should seek to sort out their disagreements and disputes according to Islamic law wherever possible. This can be done by referring such disputes to arbitration in all areas where this is not against the law of the land, particularly in what relates to family matters and financial dealings. Muslims should organize settlement of disputes and disagreements by establishing reconciliation and arbitration committees with members who combine Islamic scholarship with legal knowledge and practical experience. Moreover, they should be people of integrity with unblemished characters. Arbitration can become the proper channel if it is stipulated in the contract, or if an arbitration framework is agreed when the dispute arises. The decision of the arbitration committee should be binding on all parties and they must implement it. This is the view of the European Council for Fatwa and Research, the International *Fiqh* Academy and the Islamic *Fiqh* Council of the Muslim World League.[112]

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[112] Decision 1-9 of the European Council for Fatwa and Research; Decision 91-8-9 of the International *Fiqh* Academy; and Decision 3-19 of the Islamic *Fiqh* Council of the Muslim World League.

The decision of the **Islamic *Fiqh* Council** stated:

1. Muslim communities in non-Muslim countries are urged to refer to reliable Islamic institutions and centres to define procedures for marriage, divorce and other forms of marriage dissolution and to conform to local laws that apply to contracts, so that all parties receive their full rights.
2. The Council stresses that general interest requires that marriage contracts should include a condition that disputes will be referred to arbitration according to the provisions of Islamic law.
3. If a judgement ending a marriage is passed by a civil court in such a country, the couple should refer to a reliable Islamic centre so that they can take the necessary measures according to Islam.
4. If the civil procedures for ending a marriage allow that the case may be referred to an Islamic centre or a Muslim lawyer or arbiter to settle the dispute, the couple should accept such referral and put it into action.

The Council urged Islamic institutions and centres representing the Muslim community to:

First, to establish committees of reconciliation and arbitration in family matters. Such committees should be formed of members who combine Islamic scholarship with legal knowledge and practical expertise. They should equip such members with whatever will help them to undertake their tasks on a proper basis that is acceptable from the Islamic and legal points of view.

Secondly, to endeavour to receive their religious privileges in accordance with what the law in their countries of residence provides with regards to acceptance bynational courts of the decisions of committees of arbitration, so-called religious mediators, etc. They should also endeavour to obtain a legal authority over their own family affairs, so as to ensure compatibility between enforcing the provisions of Islamic law and keeping within the laws of their countries of residence.

Thirdly, Islamic centres should coordinate their efforts and disseminate knowledge of family and personal matters and the provisions of Islamic law applicable to them within the Muslim community.

Evidence

Islamic law endorses arbitration to settle disputes, enforce rights and remove injustice.

Arbitration is the Islamic alternative to putting disputes to civil courts in non-Muslim countries. Therefore, it must be upheld and its implementation enforced.

Sources

- Decisions by the European Council for Fatwa and Research.
- Decisions by the International *Fiqh* Academy.
- Decisions by the Islamic *Fiqh* Council of the Muslim World League.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Salah Abd al-Razzaq, *al-Aqaliyyat al-Muslimah fi al-Gharb*.
- Hamzah al-Faar, ‘Hukm Tawalli al-Marakiz wal-Jam[iyyat al-Islamiyyah [Uqud Tazwij al-Muslimin wa Faskh Ankihatihim’.

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63. PLACING ONE'S HAND ON THE TORAH OR THE GOSPEL TO TESTIFY UNDER OATH

Similar Questions

- Taking an oath with one's hand on distorted revelations;
- An oath before a civil court;
- Swearing on the Torah or the Gospel.

The Issue

In order to add more solemnity to the oath, a Muslim may be asked to put his hand on the Torah, the Gospel or the Bible in order to testify under oath before a court of law in a non-Muslim country.

Ruling

In principle, it is not permissible for a Muslim to place his hand on the Torah or the Gospel. However, if the judicial system in a non-Muslim country requires everyone who is making an oath to place his hand on the Torah, the Gospel or the Bible, the Muslim witness should request that he places his hand on the Qur'an. If his request is refused he is considered to be in a state of compulsion and in this case he may place his hand on either of them or both, without intending this as glorifying them. This is the conclusion arrived at by the Islamic *Fiqh* Council of the Muslim World League in his Decision 1-5.

Evidence

The available copies of the Torah and the Gospel are distorted versions. They are definitely not the original versions revealed to Moses and Jesus (peace be upon them). The revelations bestowed from on high to Prophet Muhammad (peace be upon him) have superseded all earlier revelations. However, if a Muslim is obliged to place his hand on the Torah or the Bible as a requirement of the judicial system in his country of residence there is no harm in doing so, without intending it as glorification of these books. In this case he is in a state of compulsion, which brings about the relaxation of rules in the case of necessity.

Sources

- Decisions of the Islamic *Fiqh* Assembly of the Muslim World League.
- Home page for IslamWeb.net website: www.islamweb.net.

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64. SWEARING BY THE GOSPEL

Similar Questions

- Swearing by distorted revelations;
- Glorifying the Gospel.

The Issue

A Muslim living in a non-Muslim country may be required to swear by the Gospel in a court of law, or when completing the process of naturalization, or on another special occasion, etc.

Ruling

It is forbidden for a Muslim to swear by the Gospel. This is the verdict arrived at by the Permanent Committee for Research and Fatwa (Decision 23/ 57-58) and the Islamic *Fiqh* Council of the Muslim World League (Decision 1-5).

Evidence

Parts of the Gospel are distorted or altered and what is altered or distorted is not the word of God.

Sources

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Decisions of the Islamic *Fiqh* Council of the Muslim World League.

65. SEEKING A NON-MUSLIM WITNESS AND TESTIFYING FOR A NON-MUSLIM

Similar Questions

- A non-Muslim as a witness;
- Acting as a witness for a non-Muslim.

The Issue

A Muslim living in a non-Muslim country may need to ask a non-Muslim to testify for him in court, or the reverse case may arise of a Muslim testifying for a non-Muslim.

Ruling

In a case being considered by a court of law it is permissible for a Muslim to request a non-Muslim to be a witness for him and it is permissible for him to be a witness for a non-Muslim, provided that he testifies to the truth.

Evidence

The permissibility of testimony by a Muslim in favour of a non-Muslim, stating the truth, is agreed by all. The texts that speak of giving testimony are general and not restricted to testifying for Muslims. God says: ‘Witnesses must not refuse when they are called in.’ (2: 282) Praising witnesses, the Prophet says: ‘The ones who give testimony before they are asked to testify.’ Permission to ask a non-Muslim to be a witness is given in the verse speaking about making a will. God says: ‘Believers, let there be witnesses to what you do when death approaches you and you are about to make bequests: two persons of probity from among your own people, or two others from outside if the pangs of death come to you when you are travelling through the land.’ (5: 106) Since Muslims living in non-Muslim countries may need to call in witnesses who are not Muslims, this is permissible.

Ibn Taymiyyah said: ‘Testimony by non-Muslims against Muslims is unacceptable. This is not subject to disagreement. What is subject to disagreement is the acceptability of non-Muslims testifying against each other.’[113]

Sources

- Fatawa and essays by Shaikh Abd al-Razzaq Afeefi.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Ibn Taymiyyah, *Majmu[al-Fatawa*.

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[113] Ibn Taymiyyah, *Majmu[al-Fatawa*, vol. 15, p. 297.

66. ENFORCING MANDATORY PUNISHMENTS IN NON-MUSLIM COUNTRIES

Similar Questions

- Enforcing mandatory punishments outside the Muslim world;
- Implementing rules of punishment in non-Muslim countries.

The Issue

When a Muslim living in a non-Muslim country commits a sin that carries a mandatory punishment, should he enforce this punishment on himself or should he ask someone else to do it?

Ruling

A Muslim who commits a sin that carries a mandatory punishment must repent and seek God's forgiveness, even when he lives in a country that enforces such punishments. To keep the sin a private matter and genuinely repent and appeal for God's forgiveness is much better. However, if he insists on being punished, as Ma[iz and the Ghamidi woman did, the ruler who wields authority is the one who sees to it that the mandatory punishment is administered. If such authority belongs to a non-Muslim, then repentance is all that is required.

This is the view expressed by the late Shaikh Muhammad ibn Uthaimeen in *Fatawa al-Aqaliyyat al-Muslimah*. It is also the fatwa issued by the European Council for Fatwa and Research.[114]

Evidence

The Islamic attitude is that anyone who commits a sin that carries a mandatory punishment should keep this private, repent, seek God's forgiveness and do whatever he can of good deeds. The Prophet says:

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[114] *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars, p. 50; A. Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*, p. 407.

‘Whoever commits anything of this and God keeps it as his secret, the matter is up to God: He may forgive or punish him.’ (Related by al-Bukhari, *hadith* No. 18) If he insists on being punished enforcing the mandatory punishment is up to the Muslim ruler, though this is not possible in non-Muslim countries. To keep the matter private is preferable, as is clear from the reports of the case of Ma[iz and the Ghamidi woman.

Sources

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.

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67. SMELLING WINES

Similar Questions

- The smell of a drunk person;
- The effect of the smell of wine.

The Issue

It is well known that unbelievers drink heavily on occasions. Muslims using public transport, which is often congested, will inevitably smell the wine as the others breathe. If this takes place for some time it might affect the Muslim passenger who has not taken an intoxicating drink. What is the ruling on this?

Ruling

If a Muslim can avoid using public transport with unbelievers then this would be preferable. However, if he has to use such transport the smell of their breath does not intoxicate and it is not considered drinking. This is the view of the Permanent Committee for Research and Fatwa in Saudi Arabia.[115]

Evidence:

The mere smell that does not lead to intoxication cannot be considered drinking. The reason for prohibiting drinking is to ensure that one does not cloud one's mind. If this does not happen, then what is prohibited does not occur. However, when there is no need it is better to avoid such a situation.

Sources

- Fatawa by the Permanent Committee for Research and Fatwa.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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[115] *Fatawa*, the Permanent Committee for Research and Fatwa, vol. 22, p. 86. Fatwa No. 18,074.

SECTION 6: MANNERS, DRESS AND ADORNMENT

68. CONGRATULATING NON-MUSLIMS ON THEIR RELIGIOUS FEASTS

Similar Questions

- Joining non-Muslims on their religious feasts.

The Issue

What is the ruling concerning Muslims living as a minority if they congratulate non-Muslims on their religious occasions, such as Christmas? This is often necessary when there are cultural ties requiring this, such as with neighbours, classmates, colleagues at work, etc.

Ruling

Scholars have expressed two divergent views on this question. **The first view** considers it forbidden to congratulate unbelievers on their religious occasions. If they congratulate us on our religious feasts, we do not reciprocate. It is forbidden for a Muslim to accept their invitations on such occasions, to show pleasure or to give presents. Ibn al-Qayyim mentions that scholars are in agreement on this. He says: ‘To offer congratulations on occasions of rituals that are peculiar to unbelief is generally agreed to be forbidden. This refers to offering congratulations to unbelievers on their feasts or fasting, saying: “May this occasion be blessed for you”, or “Enjoy this occasion”, etc. Even if the person offering this is spared landing in disbelief, he has committed what is forbidden. It is like congratulating them on prostrating themselves over a crucifix. It is indeed more sinful and abominable than offering congratulations for committing grave offences such as drinking wine, manslaughter or adultery. Many who do not have due respect for religion often commit such an offence without realizing the gravity of this error. Whoever congratulates someone on committing a sin, a deviation or an act of unbelief incurs God's displeasure.'[116]

Shaikh Muhammad ibn Uthaimeen also gave the same fatwa,[117] and it is also referred to in Decision 3-6 of the Islamic *Fiqh* Council of the Muslim World League.

Evidence

Congratulating unbelievers on their religious occasions implies endorsing their rituals of unbelief and accepting it for them. Although the Muslim who offers such congratulations does not accept it for himself, it is forbidden for him to accept such rituals of unbelief or congratulate others on them, because God does not accept them. He says: 'If you disbelieve, God has no need of you; nor is He pleased with disbelief by His servants. If you give thanks, He is pleased with you. No soul will bear the burden of another. In time, to your Lord you all must return, and then He will tell you the truth of all you did. He has full knowledge of what is in people's hearts.' (39: 7) 'This day I have perfected your religion for you and have bestowed on you the full measure of My blessings and have chosen Islam as a religion for you.' (5: 3)

It is a duty of every Muslim to be proud of his faith, and to limit himself to what God and His messenger have legislated in this true religion that God wants His creatures to believe in. He must neither add to it nor leave anything out of it. Courtesy or friendliness in such matters is a type of appeasement at the expense of faith, it strengthens unbelievers and makes them proud of their faith. Ibn Taymiyyah said: 'Participating with them in some of their festivals will please them with their falsehood [...] . It may tempt them to make use of any opportunity to humiliate those who are weak.'[118]

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[116] Ibn al-Qayyim, *Ahkam Ahl al-Dhimmah*, vol. 1, p. 206.

[117] *Fatawa al-Aqaliyyat al-Muslimah*, pp. 33, 35 and 40–41.

[118] Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*, vol. 1, p. 546.

If on their own religious occasions unbelievers congratulate Muslims, Muslims should not respond because these are not occasions for Muslims. They are occasions that God is not pleased with because they were either invented and not originally part of their faith, or they were part of it but they were subsequently abrogated as Islam abrogated earlier religions. God says: ‘He who seeks a religion other than self-surrender to God it will not be accepted from him, and in the life to come he will be among the lost.’ (3: 85)

The second view distinguishes between unbelievers who are at peace with Muslims and those who are at war with them. It is not permissible to congratulate the latter on their feasts, but is so for the ones at peace. There is no harm for a Muslim or an Islamic centre to congratulate non-Muslims who are at peace with us on their festive occasions, either verbally or by sending cards that do not carry religious symbols or wording which are contrary to Islam, such as the crucifix. The usual words of congratulations on such occasions do not normally include what may be interpreted as endorsement or acceptance of what they believe in. They are merely courteous words that people have come to accept. There is nothing to prevent accepting their gifts or reciprocating them either, particularly by one who has relatives among them, or a neighbour or a colleague, etc. The case is even stronger if we wish to introduce Islam to them and bring them nearer to it, or to win their sympathy towards Muslims. Nothing of this can come about if we stick to an attitude of estrangement. This is the view endorsed by the European Council for Fatwa and Research in its Decision 3-6.

Evidence

The Qur’an distinguishes between unbelievers on the basis of their attitudes towards Muslims. Those who are at peace with Muslims are treated differently from those who are at war. God says: ‘God does not forbid you to deal kindly and with full equity with those who do not fight you on account of your faith, nor drive you out of your homes. God loves those who behave equitably. God only forbids you to turn in friendship towards those who fight against you because of your faith, and drive you from your homes, and help others to drive you out. Those of you who turn towards them in friendship are indeed wrongdoers.' (60: 8–9)

The first verse speaks about those who are at peace with Muslims, and these should be treated with equity and kindness since dealing kindly with people is more than treating them with equity. The ones which the second verse forbids friendship with are those who are hostile to Muslims and fight them, driving them from their countries for no reason other than their belief in God. This was how the idolaters of the Quraysh treated the Prophet and his companions. The Qur'an uses the word *birr* in describing the treatment Muslims should extend to unbelievers who are at peace with them. It is also the word the Qur'an uses in reference to the most important duty of man after his duty towards God, namely dutifulness to parents.

Both al-Bukhari and Muslim relate a *hadith* reported by Asma' bint Abu Bakr who said that she went to see the Prophet and said to him: 'Messenger of God, my mother has come to me and she is still an idolater, but she is after some gift. Should I give her [something]?' The Prophet said to her: 'Give [a gift] to your mother.' The Prophet said this concerning an idolater woman and it is well known that Islam adopts a milder attitude towards the people of divine religions than it takes towards idolaters. It even permits eating their meat and marrying their women. Needless to say, such a marriage will mean kindly treatment and mutual love between the spouses and close ties between their families. It will also lead to children who will be dutiful towards their mothers. It is certainly not being dutiful for a Muslim child to not congratulate his mother, who is a follower of a divine religion, on her feasts and similar occasions. The same applies to the child's maternal relatives.

Every Muslim is required to maintain good and well mannered behaviour with all people, as the Prophet advised Abu Dharr, saying: 'Fear God wherever you are, and follow up a bad deed with a good one to wipe it out, and behave well towards people.' (Related by al-Tirmidhi) Needless to say, the word 'people' mentioned in the *hadith* applies to all people, Muslims and non-Muslims alike.

This is further confirmed if the non-Muslims take the initiative and congratulate Muslims on their Islamic festivals. We are commanded to repay one good deed with another and to reply to a greeting with a better one, or at least a similar one. God says: 'When a greeting is offered you, answer it with an even better greeting, or [at least] with its like. God keeps count of all things.' (4: 86) It is not right for a Muslim to be less well behaved than someone else. The Prophet says: 'The believers who are most perfect in faith are those who have the best manners.' (Related by Ahmad, Abu Dawud, *hadith* No. 4,682, and al-Tirmidhi, *hadith* No. 1,162)

Scholars of the first view respond to the arguments of the second view as follows:

This view is contrary to the generally agreed view of scholars, as related by Ibn al-Qayyim. Offering congratulations is not an aspect of kindly treatment and equity towards unbelievers who are at peace with us. It is not reported that the Prophet congratulated the Jews when they were living in Madinah for some time, although such occasions arose, yet he had the most splendid character. To draw analogy between offering congratulations and replying to greetings, visits and accepting invitations does not apply, because such actions do not relate to a religious ritual of theirs while feasts and offering congratulations on such occasions are religious marks. The Prophet says: 'Every community has its own feast and this is ours.' (Related by al-Bukhari, *hadith* No. 952)

If a Muslim finds himself in an embarrassing situation at work or at university because he remains silent when unbelievers offer him congratulations on their own feasts he may answer them in general terms, without mentioning the feast or the congratulations.

Sources

- Ibn al-Qayyim, *Ahkam Ahl al-Dhimmah*.
- Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*.
- Decisions of the European Council for Fatwa and Research.
- Decisions of the Islamic *Fiqh* Council of the Muslim World League.

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Fahd Bahmmam, *Dalil al-Mubta[ath al-Fiqhi*.

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69. Shaking Hands with Women

Similar Questions

- Offering one's hand to shake hands with a woman;
- Shaking hands with women who are not-relatives.

The Issue

A woman who is not a relative may offer to shake hands with a Muslim, or in a similar situation a Muslim woman may be required to shake hands with a man unrelated to her, which is very frequent in non-Muslim countries. What is the ruling concerning shaking hands with the opposite sex, particularly if refusal causes embarrassment?

Ruling

Scholars have two different views on this question.

The first view states that it is not permissible for a Muslim man to shake hands with a woman who is unrelated to him, or for a Muslim woman to shake hands with a man who is unrelated to her. This is the view of the majority of scholars, and included in Decision 23 (11-3) of the International *Fiqh* Academy. It is also upheld by Shaikh Abd al-Azeez ibn Baz.[119] A Muslim who feels embarrassed for not shaking hands should offer a courteous apology, explaining that this is required by his faith.

Evidence

[A'ishah reported: 'By God, the Prophet never touched a woman's hand, and he accepted women's pledges only verbally.' (Related by al-Bukhari, *hadith* No. 2,713) and the Prophet said: 'I do not shake hands with women. What I say to one woman is the same as though I am saying it to one hundred women.' (Related by al-Nassa'i, *hadith* No. 4,181; al-Tirmidhi, *hadith* No. 1,597; Ibn Majah, *hadith* No. 2,874; Ahmad, *hadith* No. 27,006) Al-Tirmidhi grades it as 'Good'. Since the Prophet refrained from shaking hands with women when it was called for, i.e. when accepting pledges, this indicates that it is not permissible at all. The Prophet is the role model and the one who legislates for his community through his words, actions and approvals.

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[119] A. Ibn Baz, *Majmu[Fatawa Ibn Baz*, vol. 4, p. 247; S. al-Fawzan (ed.), *Fatawa al-Tibb wal-Marda*, vol. 1, p. 223.

Ma[qil ibn Yasar reported that the Prophet said: 'Should any of you be hit on his head with an iron needle is better for him that touching a woman who is unlawful for him.' (Related by al-Tabarani, *hadith* No. 486. Al-Mundhiri said of this *hadith* that it is also related by al-Bayhaqi, and al-Tabarani's chain of transmission includes only reliable reporters.)

Shaking hands with a woman arouses temptation and stirs desire. God says: 'Do not come near adultery. It is indeed an abomination and an evil way.' (17: 32) This is an order not to behave in such a way that approachs adultery or do anything that may lead to it. Shaking hands with the opposite sex is one such thing, indeed it presents more temptation than gazing at an unrelated woman, which is also forbidden by God as He says: 'Tell believing men to lower their gaze and to be mindful of their chastity. This is most conducive to their purity. God is certainly aware of all that they do.' (24: 30)

The second view, which is the view of some early scholars, considers that it is permissible to shake hands with an elderly woman if it is certain that neither one will feel temptation.

Evidence

This is based on analogy with looking at an elderly woman who may lay aside her garments, as God says: 'Such elderly women as are past the prospect of marriage incur no sin if they lay aside their [outer] garments, provided they do not make a showy display of their charms. But it is better for them to be modest. God hears all and knows all.' (24: 60)

Scholars upholding the majority view respond by saying that the analogy between shaking hands with a woman and looking at her is insupportable because touching is more serious. There is no evidence to suggest that shaking hands with the opposite sex is permissible.

Sources

- Uthman al-Zayla[i, *Tabyin al-Haqa'iq Sharh Kanz al-Daqa'iq*.
- Mansur al-Bahuti, *Kashf al-Qina[[an Matn al-Iqna[*.
- Decisions by the International Islamic *Fiqh* Academy.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abd al-Azeez ibn Baz, *Majmu[Fatawa Ibn Baz*, edited by Muhammad al-Shuway'ir.
- Salih al-Fawzan, (ed.), *Fatawa al-Tibb wal-Marda*.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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70. BOWING TO GREET AN UNBELIEVER

Similar Questions

- Honouring an unbeliever;
- Bowing when greeting unbelievers in sports;
- Bowing when greeting or meeting others.

The Issue

What should be the attitude of a Muslim living in a non-Muslim country to the tradition of bowing associated with some sports, such as in Karate? Bowing is either by merely lowering one's head or one's chest, and if the coach bows, the trainee should also bow. This is all a question of greeting.

Ruling

It is not permissible to bow in greeting to a Muslim or non-Muslim, whether by lowering one's head or more. This is the ruling of the Permanent Committee for Research and Fatwa.[120]

Evidence

Anas reported that a man said to the Prophet: 'Any of us may meet his brother or friend: may he bow to him?' The Prophet said: 'No.' The man asked: 'May he hug and kiss him?' The Prophet said: 'No.' The man asked: 'May he shake hands with him?' The Prophet said: 'Yes.' (Related by al-Tirmidhi, *hadith* No. 2,728; Ibn Majah, *hadith* No. 3,702) This applies to greeting a Muslim, it goes without saying that it is even more applicable to an unbeliever.

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[120] Fatawa by the Permanent Committee for Research and Fatwa, vol. 1, p. 233, Fatwa No. 5,313.

Bowing is a greeting of worship and worship may not be offered to anyone other than God.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Muhammad ibn Abd al-Azeez ak-Musnad (ed.), *Fatawa Islamiyyah*.

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71. ACCEPTING GIFTS FROM UNBELIEVERS

Similar Questions

- Taking a gift from an unbeliever;
- An unbeliever's gift to a Muslim;
- A gift from a non-Muslim.

The Issue

Non-Muslims in non-Muslim countries may give gifts to Muslims, such as exchanging gifts with other students or colleagues or sweets and cakes that are given on occasions. May these be accepted?

Ruling

It is perfectly permissible to accept a gift from a non-Muslim, regardless of the intention of the person giving it. It is also permissible to accept gifts from them on their festive occasions, unless these include something forbidden such as wines or the meat of an animal dedicated at the time of its slaughter to anyone other than God. A Muslim should use such occasions to strengthen relations with non-Muslims and introduce Islam to them.

This view is stated by Ibn Taymiyyah, and it is given in a fatwa by the Permanent Committee for Research and Fatwa in Saudi Arabia. It is also endorsed by the European Council for Fatwa and Research, Shaikh Abd al-Azeez ibn Baz, Shaikh Abdullah ibn Jibreen and Shaikh Salih al-Fawzan.[121]

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[121] Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*, vol. 2, pp. 52–9; Fatawa by the Permanent Committee for Research and Fatwa, vol. 3, p. 423 Fatwa No. 5,176; Decision 3-6 of the European Council for Fatwa and Research; Ibn Baz, *Al-Fatawa al-Jami[ah lil-Mar'ah al-Muslimah*, vol. 3, p. 1,048; Ibn Jibreen, *Fatawa al-Aqaliyyat al-Muslimah*, pp. 43–4 and *Al-Mufid fi Taqrib Ahkam al-Musafir*, p. 141; al-Fawzan, *Al-Muntaqa*, vol. 1, p. 267.

Evidence

The Qur'anic verses: 'God does not forbid you to deal kindly and with full equity with those who do not fight you on account of your faith, nor drive you out of your homes. God loves those who behave equitably. God only forbids you to turn in friendship towards those who fight against you because of your faith, and drive you from your homes, and help others to drive you out. Those of you who turn towards them in friendship are indeed wrongdoers.' (60: 8–9) These verses make a clear statement of the permissibility of maintaining good and peaceful relations with unbelievers who are at peace with Muslims. Needless to say, this includes exchanging gifts with them.

The Prophet used to accept gifts from unbelievers. He accepted the gift sent to him by al-Muqawqis, the ruler of Egypt, and the one from the Byzantine Emperor, who was a Christian. Al-Bukhari devotes a section in his *Sahih* anthology to gifts and includes in it a chapter on 'accepting gifts from unbelievers'. Entries in this chapter include a report by Abu Humayd al-Sa[idi: 'The King of Aylah sent the Prophet a white mule as a gift.' Anas reports that Ukaydar Duma sent a gift to the Prophet and that 'a Jewish woman sent to God's messenger a cooked lamb which was poisoned.' [A'ishah said: 'God's messenger used to accept gifts and reciprocate them.' This is a general statement that applies to all gifts.

Sources

- Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Decisions of the European Council for Fatwa and Research.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.
- Abd al-Azeez ibn Baz,, *Al-Fatawa al-Jami[ah lil-Mar'ah al-Muslimah*.
- Abdullah ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*.
- Salih al-Fawzan, *Al-Muntaqa*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

72. GIVING GIFTS TO NON-MUSLIMS

Similar Questions

- Giving a gift to an unbeliever;
- Exchanging gifts with unbelievers.

The Issue

Residence in a non-Muslim country may require that a Muslim should give a gift to a non-Muslim to maintain good social relations with non-Muslims. Since maintaining good relations and exchanging gifts are part of normal processes in society, is this permissable?

Ruling

It is permissible to give gifts to unbelievers who are not at war with us to win their hearts over and to incline them towards Islam. This is the view of the European Council for Fatwa and Research. Ibn Taymiyyah states the permissibility but excludes giving them gifts on their religious feasts, which he considers forbidden. The Islamic *Fiqh* Council of the Muslim World League expresses the same view.[122]

Evidence

'God does not forbid you to deal kindly and with full equity with those who do not fight you on account of your faith, nor drive you out of your homes. God loves those who behave equitably. God only forbids you to turn in friendship towards those who fight against you because of your faith and drive you from your homes, and help others to drive you out. Those of you who turn towards them in friendship are indeed wrongdoers.' (60: 8–9) These verses make a clear statement of the permissibility of maintaining good and peaceful relations with unbelievers who are at peace with Muslims. Needless to say this includes exchanging gifts with them.

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[122] Decision 3-6 of the European Council for Fatwa and Research; Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*, vol. 2, p. 15; Decision 3-6 of the Islamic *Fiqh* Council.

Both al-Bukhari and Muslim relate a *hadith* reported by Asma' bint Abu Bakr who said that she went to see the Prophet and said to him: 'Messenger of God, my mother has come to me and she is still an idolater, but she is after some gift. Should I give her [something]?' The Prophet said to her: 'Give [a gift] to your mother.' (Related by al-Bukhari, *hadith* No. 2,620; Muslim, *hadith* No. 1,003)

An authentic *hadith* mentions that 'the Prophet received a number of suits and he gave one to [Umar. [Umar said to him: "Messenger of God, how come that you have given me this gift yet you had expressed disapproval of the Utarid's suit?" The Prophet said to him: "I have not given it to you so that you should wear it." [Umar sent it as a gift to a brother of his in Makkah who was an idolater.' (Related by al-Bukhari, *hadith* No. 886; Muslim, *hadith* No. 2,068)

Several *hadiths* suggest that exchanging gifts in this way is perfectly permissible, such as the *hadith* where [A'ishah said: 'God's messenger used to accept gifts and reciprocate them.' (Related by al-Bukhari, *hadith* No. 2,585) The *hadith* suggests that the Prophet used to give similar or better gifts.

It is forbidden to give unbelievers gifts on their religious feasts because this is a gesture that implies respect of their unbelief and helps them to persist in their erring ways.

Sources

- Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*.
- Decisions of the European Council for Fatwa and Research.
- Decisions of the Islamic *Fiqh* Council of the Muslim World League.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

73. GREETING UNBELIEVERS

Similar Questions

- Offering a greeting to a non-Muslim;
- Saying the greeting of peace to an unbeliever.

The Issue

A Muslim living in a non-Muslim country meets a non-Muslim and starts by greeting him, whether this takes place in the street, at school, the workplace or anywhere else.

Ruling

Scholars have two different views on this question.

The first view makes clear that it is not permissible for a Muslim meeting an unbeliever to start by offering the greeting of peace. If the unbeliever starts by saying *assalamu alalikum* (i.e. 'peace be to you'), the Muslim may reply by saying *wa alaikum* (i.e. 'and to you'). He may also give the reply in full, *wa alaikum assalam*, (i.e. 'and peace be to you too'), if he is certain that when the unbeliever says the greeting he is clearly meaning it. This is the view of the majority of scholars, including Ibn al-Qayyim. Among contemporary scholars who subscribe to this view are Shaikh Abd al-Azeez ibn Baz and Shaikh Salih al-Fawzan.[123]

Evidence

The Prophet says: 'Do not start by offering the Jews or the Christians the greeting of peace.' (Related by Muslim, *hadith* No. 2,167) He also says: 'If the people of earlier revelations greet you, say: "And to you."' (Related by al-Bukhari, *hadith* No. 6,258; Muslim, *hadith* No. 2,163) This applies even more to other unbelievers.

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[123] Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*, vol. 1, pp. 192–200; Ibn Baz, *Aajmu[al-Fatawa*, vol. 5, p. 406; al-Fawzan, *Al-Muntaqa*, vol. 1, p. 267.

The Islamic greeting of peace suggests heartfelt tenderness and a Muslim is not allowed to love unbelievers because God does not love unbelievers and He has prohibited believers to love them. He says: ‘Believers! Do not take My enemies, who are your enemies as well, for your friends, showing them affection when they have rejected the truth you have received.’ (60: 1)

However it is permissible to return their greetings, as this is the import of the Qur’anic verse: ‘When a greeting is offered you, answer it with an even better greeting, or [at least] with its like. God keeps count of all things.’ (4: 86) It is reported that the Prophet stopped replying to the Jews because they used to twist their words and say *assamu alaikum*, omitting the syllable *la*, changing the meaning of the word to ‘death be to you’ instead of ‘peace be to you.’ He said: ‘When people of earlier revelations greet you, some of them say *assamu alaikum*. Therefore, reply by saying *wa alaikum*.’

The second view considers that it is permissible to greet unbelievers first if this is to win their goodwill. This view is stated by Shaikh Muhammad ibn Uthaimeen and Shaikh Abdullah ibn Jibreen.[124] The latter states: ‘What is not permissible is to start by offering the greeting of peace to those who are persistent in disbelief and who are unlikely to be inclined to Islam. A Muslim may not begin by greeting them or stand up when he sees them coming or give them a place of honour in a gathering. As for those who are more inclined towards Islam, this is perhaps permissible as needed.’

Evidence

The texts that prohibit offering the greeting to Jews and Christians are understood to refer to those of them who are persistent in disbelief and entertain no goodwill towards Islam. It is not permissible for Muslims to be the first to greet them.

Sources

- Ibn Taymiyyah, *Iqtida’ al-Sirat al-Mustaqim*.
- Abd al-Azeez ibn Baz,, *Majmu[al-Fatawa*.

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[124] *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars, pp. 46 and 48.

- Salih al-Fawzan, *Al-Muntaqa*.
- Abdullah ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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74. OFFERING A GREETING OTHER THAN PEACE TO NON-MUSLIMS

Similar Questions

- Welcoming unbelievers with a greeting other than peace;
- Starting with an ordinary greeting to non-Muslims.

The Issue

A Muslim meets an unbeliever and gives him a greeting other than *salam*, such as ‘good morning’.

Ruling

Scholars have two different views on this point.

The first view, which is endorsed by Ibn Taymiyyah as well as Shaikh Abdullah ibn Jibreen,[125] says that this is permissible.

Evidence

Such a greeting does not imply any acknowledgement of a higher position while prohibition applies to greetings that include a supplication for the blessing, safety and compassion. Hence although it is not proper to start by offering unbelievers such blessings this is normally not implied in general greetings.

The second view says that it is not permissible for a Muslim to greet a non-Muslim first, even with any greeting that does not imply peace. This is the view supported by Shaikh Salih al-Fawzan.[126]

Evidence

The general import of the *hadith* that requires Muslims not to start by greeting Jews and Christians also encompasses other greetings, not merely the Islamic one of peace. Moreover, being the first to greet indicates heartfelt tenderness towards them, and a Muslim may not love unbelievers.

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[125] Ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*, p. 144.

[126] S. al-Fawzan, *Al-Muntaqa*, vol. 1, p. 276.

Sources

- Salih al-Fawzan, *Al-Muntaqa*.
- Abdullah ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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75. EXCHANGING VISITS WITH UNBELIEVERS

Similar Questions

- Visiting unbelievers and unbelievers visiting Muslims;
- Muslims visiting unbelievers.

The Issue

When Muslims live in non-Muslim countries and mix with non-Muslims people may invite each other to their homes, as often happens between colleagues and neighbours. What is the ruling concerning such exchange of visits?

Ruling

Exchanging visits with non-Muslims is permissible if needed or if it brings about something useful, such as Muslims introducing Islam to them or giving some advice. This is stated in the fatwas of the Permanent Committee for Research and Fatwa and by Shaikh Abd al-Azeez ibn Baz.[127]

Evidence

The Prophet visited his uncle Abu Talib before his death and called on him to believe in Islam. He also visited a young Jewish man and asked him to accept Islamand accepted the invitations of Jews and ate with them, which is mentioned in numerous well known reports.

Calling people to Islam is a noble purpose and inviting them to visit and visiting them at their places are means that may serve this purpose. Means are given the same status as the objectives.

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[127] Fatawa by the Permanent Committee for Research and Fatwa, vol. 2, p. 96, Fatwa No. 8,097; Ibn Baz, *Fatawa Nur [ala al-Darb*, p. 371.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Salih al-Fawzan, *Al-Muntaqa*.
- Abd al-Azeez ibn Baz, *Fatawa Nur [ala al-Darb*.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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76. FRIENDSHIP WITH UNBELIEVERS

Similar Questions

- To have a friend who is an unbeliever;
- A non-Muslim as a friend;
- To be close with a non-Muslim.

The Issue

A Muslim living in a non-Muslim country may have a close friend who is a non-Muslim. As such they may eat and go places together.

Ruling

While it is not permissible to have a close friend who is an unbeliever, if one needs to join such a person for a meal, such as eating with one's guest or in a banquet, or casually or to call on him to believe in Islam, or to advise him, this is permissible. This ruling is expressed by Shaikh Abd al-Azeez ibn Baz and Shaikh Abdullah ibn Jibreen.[128]

Evidence

God has severed relations based on mutual love between Muslims and unbelievers. He says: 'You have a good example in Abraham and those who followed him, when they said to their people: "We disown you and what you worship instead of God. We reject you. The enmity and hate that have arisen between us and you will last until you believe in God alone."' (60: 4)

A Muslim is required to disown unbelievers and dislike them for God's sake, without harming them or being unfair to them. However, he must not take them as friends or intimate associates. God says: 'You shall not find people who truly believe in God and the Last

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[128] A. Ibn Baz, *Fatawa Nur [ala al-Darb*, p. 370; and *Majmu[Fatawa Ibn Baz*, vol. 9, p. 329; Ibn Jibreen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 40.

Day on friendly terms with those who contend against God and His Messenger, even though they may be their fathers, sons, brothers, or kindred. These are the people in whose hearts God has inscribed faith and whom He has strengthened with a spirit of His own. He will admit them into gardens through which running waters flow, where they will abide. Well pleased is God with them, and they with Him. They are the party of God. It is the partisans of God that will be truly successful.' (58: 22)

Sources

- Abd al-Azeez ibn Baz, *Fatawa Nur [ala al-Darb*.
- Abd al-Azeez ibn Baz, *Majmu[Fatawa Ibn Baz*, edited by Muhammad al-Shuway'ir.
- *Fatawa al-Aqaliyyat al-Muslimah* by a group of scholars.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Mihmas Abdullah al-Jalood, *Al-Muwalat wal-Mu[adat fi al-Shari[ah al-Islamiyyah*.

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77. GREETING A MIXED GROUP OF MUSLIMS AND UNBELIEVERS

Similar Questions

- Offering the greeting of peace to a group of Muslims and non-Muslims.

The Issue

A Muslim living in a non-Muslim country may meet a group of people, some of whom are Muslims and some who are not. Can he offer them the greeting of peace generally? He may come into a room or a class and find many people, including some Muslims. May he say *assalamu alaikum* (i.e. peace be to you)?

Ruling

It is permissible to offer the greeting of peace to a group of people that includes some Muslims, but he should mean to direct his greeting to the Muslims. This is stated by Ibn Hajar and endorsed by Shaikh Abdullah ibn Jibreen.[129]

Evidence

It is confirmed that the Prophet passed by a group of people that included Muslims, idolaters, Jews and hypocrites, and he offered them the greeting of peace. (Related by al-Bukhari, *hadith* No. 4,566; Muslim, *hadith* No. 1,798) Ibn Hajar says: 'This *hadith* indicates that offering the greeting of peace to Muslims who are with unbelievers is permissible. The person offering it should intend it to the Muslims.'

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[129] Ibn Hajar, *Fath al-Bari*, vol. 8, p. 231; Ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*.

Sources

- Ibn Hajar, *Fath al-Bari*
- Abdullah ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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78. WEARING THE CLOTHES OF LOCAL PEOPLE

Similar Questions

- Clothes non-Muslims wear;
- Dressing according to local customs.

The Issue

To avoid appearing too conspicuous a Muslim living in a non-Muslim country may need to consider choosing clothes of the style the local people wear. What is the ruling on this point?

Ruling

A Muslim should follow the local custom in whatever is permissible in dress as long as it is not peculiar to them. He should not make himself too conspicuous in the way he dresses. Indeed a man is recommended, or even has a duty, to follow the visible tradition if this serves the interests of Islam. This is the view of Ibn Taymiyyah and endorsed by the Permanent Committee for Research and Fatwa.[130]

Evidence

The Prophet wore the same style of clothes as his people and never wore anything that distinguished him from others. Any non-religious clothes are permissible for Muslims to wear. Indeed, the Prophet wore the same clothes the idolater Arabs used to wear at the time.

It is not permissible to wear clothes that are peculiar to unbelievers or which are deliberately worn to distinguish themselves from others.

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[130] Ibn Taymiyyah, *Iqtida' al-Sirat al-Mustaqim*, vol. 1, p. 471; Fatawa by the Permanent Committee for Research and Fatwa, vol. 3, pp. 306–9.

The Prophet said to one of his companions: ‘These are clothes of the unbelievers. Do not wear them.’ (Related by Muslim, *hadith* No. 2,077) [Umar said: ‘Beware of too much luxury and the special clothes of the idolaters.’ (Related by Muslim, *hadith* No. 2,069)

Sources

- Ibn Taymiyyah, *Iqtida’ al-Sirat al-Mustaqim*.
- Fahd Bahammam, *Dalil al-Mubta[ath al-Fiqhi*.

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SECTION 7: INTERNATIONAL RELATIONS

79. PARTICIPATION IN POLITICS

Similar Questions

- Standing for parliament;
- Participation in elections.

The Issue

Should Muslim minorities take part in political decision-making through membership of political parties or participation in local and parliamentary elections, and even contesting such elections?

Ruling

Participation in politics by Muslims living in non-Muslim countries involves a mixture of benefit and harm. Among the benefits are that it allows a positive contribution to solving the problems faced by the populations in these countries from an Islamic perspective. It also contributes to showing Islam in its true nature and provides an avenue to explain that it is the true divine faith, and gives a positive image of Muslims as citizens who contribute to their societies in different fields of civilization. It leads to the protection of the rights of Muslims who live outside the Muslim world and supports the fair demands and issues of the Muslim community. On the negative side it requires attending some sessions that may be unfair and involve violation of Islamic rules. It may also lead to division within the Muslim community or to compromises that are not counterbalanced by clear benefits.

The whole issue of participation is one of performing acceptable political work that is subject to the balance between benefit and harm resulting from it. Participating in politics is perfectly legitimate when it is approached with good intention and the benefit is clear and outweighs the harm. It may even be a duty if it is a way to ensure some clear benefit or stop and prevent some clear harm. On the other hand, such participation may be forbidden if the harm resulting from it clearly outweighs its benefit. It may indeed lead to people entertaining unacceptable concepts and beliefs. As such, the fatwa regarding participation in politics changes according to the time, place and conditions, and is subject to the changes of the benefit or harm resulting from it.

This view is endorsed by the Assembly of Muslim Jurists of America (Decision 5-4), the European Council for Fatwa and Research (Decision 5-16) and the Islamic *Fiqh* Council of the Muslim World League (Decision 5-19). All these councils stress that the main principle that governs political work is that it should be subject to Islamic values and principles, controlled by what brings legitimate benefit and supervised by a group of scholars and experts. For political participation to be legitimate and effective it should be subject to certain proper controls, including:

1. A Muslim who participates in politics should intend such participation to serve the interests of Muslims and prevent harm from being inflicted on them.
2. Such a Muslim should be convinced that his participation in politics is more likely to bring about positive results that benefit Muslims in his country.
3. Participation in politics must not adversely affect his faith and attending to his Islamic duties, and must not take up all his time and energy so as to divert him from playing his role in advocacy and educational activities.
4. Muslims participating in politics should maintain Islamic moral values, such as truth, justice, fulfilment of promises, being true to their trust, etc.

Evidence

Political participation comes under general Islamic policy and the verdict concerning it depends on balancing the benefit against harm resulting from it. This is indicated by the Qur'anic verse: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression.' (5: 2) As such, the whole issue is subject to the general rules of balancing the resulting benefit against the likely harm.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions by the European Council for Fatwa and Research.
- Decisions by the Islamic *Fiqh* Council of the Muslim World League.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Muhammad al-Subayyil, 'Musharakat al-Muslim fi al-Intikhabat ma[Ghayr al-Muslimin'.
- Abd al-Kareem Zaidan, *Al-Dimuqratiyyah wa Musharakat al-Muslim fi al-Intikhabat* (a paper presented to the sisxteenth session of the Islamic *Fiqh* Council, Makkah 1422 AH, 2001).
- Wahbah al-Zuhaili, 'Musharakat al-Muslim fi al-Intikhabat'.

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80. TAKING UP PUBLIC OFFICE IN NON-MUSLIM COUTRIES

Similar Questions

- Taking up public office from a non-Muslim;
- Assuming public office under a non-Muslim authority;
- Appointment as a judge in a non-Muslim country.

The Issue

A Muslim may be chosen for public office in a country where Muslims are in a minority and the government is non-Muslim. Such public offices may include membership of parliament or a municipal council, being mayor of a town, etc.

Ruling

There is no harm in a Muslim assuming public office in a non-Muslim country if he hopes to achieve public benefit and reduce whatever he can of evil and harm, working to establish justice in whatever way is available to him, which he should keep in mind at all times. He will therefore consider himself a supporter of anyone suffering injustice, so as to remove or reduce such injustice. He should not allow himself to support the person or the authority inflicting injustice. In all this the controls of participation which are outlined under the previous question, ‘Participation in Politics’, should be observed.

This view is endorsed by the Assembly of Muslim Jurists of America (Decision 1-4). Shaikh Khalid Abd al-Qadir also expresses the same view, but in addition he places the following conditions:[131]

1. The work involved must be permissible in itself;

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[131] K. Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*, p. 615.

2. It does not involve helping unbelievers in what may cause harm to Muslims;
3. It does not lead to Muslims submitting to unbelievers; and
4. The person who assumes such an office should have a strong character, be trustworthy and be able to discharge the duties of his office with wisdom.

Evidence

The Prophet Joseph took up a ministerial post in a country of unbelievers. He said to the King: 'Give me charge of the store-houses of the land. I am able to look after them with wisdom.' (12: 55) The majority of scholars maintain that the laws given in earlier divine messages are applicable to Muslims unless they have been abrogated. There is nothing to show that this was abrogated.

Al-Baydawi said: 'This verse gives evidence that it is permissible to seek public office and to show that one is ready to assume it and to take it up from an unbeliever if one knows that this is the only way to establish truth and maintain justice.'[132]

Al-Alusi said: 'This verse provides evidence that it is permissible to apply for public office if the one who seeks it is able to maintain justice and implement the rules of divine law, even though he has to request it from an unjust ruler or one who is an unbeliever. It may be his duty to seek office if his assuming it ensures the fulfilment of a duty and he is appointed to do it.'[133]

All this comes under proper policy and taking up what brings benefit and prevents harm. Islamic law aims at ensuring and complementing benefit, on the one hand, and preventing or reducing harm, on the other. If it is confirmed that assuming a particular office ensures more benefit than harm, it is perfectly permissible to take it up. Otherwise, it is not.

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[132] Al-Baydawi, *Anwar al-Tanzil*, vol. 3, p. 168.

[133] Al-Alusi, *Ruh al-Ma[ani*, vol. 7, p. 7.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Al-Baydawi, *Anwar al-Tanzil wa Asrar al-Ta'wil*.
- Al-Alusi, *Ruh al-Ma[ani fi Tafsir al-Qur'an al-[Azim wal Sab[al-Mathani*.

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81. HELPING NON-MUSLIM CANDIDATES TO WIN PUBLIC OFFICE

Similar Questions

- Voting for non-Muslim candidates;
- Electing non-Muslims.

The Issue

Muslims may help a non-Muslim candidate to win a public office because he is the best candidate and he is likely to better serve the Muslim community.

Ruling

It is permissible to help one candidate against another, even if the candidate is not a Muslim, if his election to public office is more likely to prevent injustice or bring benefit. This is endorsed by the Assembly of Muslim Jurists of America (Decision 1-4).

Shaikh Abdullah Bin Bayyah says: 'This is a matter that should be determined by Islamic institutions and organizations. If they see that this is the best way to serve the interests of the Muslim community and that such interests are unlikely to be realized without such participation then it is appropriate, provided that the Muslims do not have to make compromises that outweigh the interests they receive.'[134]

Evidence

All this comes under proper policy and taking up what brings benefit and prevents harm. Whatever brings benefit to Muslims is legitimate unless it results in a greater harm. Islamic principles make clear that the objective of Islamic law is to ensure and complement benefit and prevent or reduce harm.

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[134] A. Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*, p. 462.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Muhammad al-Subayyil, ‘Musharakat al-Muslim fi al-Intikhabat ma[Ghayr al-Muslimin’.
- Abd al-Kareem Zaidan, *Al-Dimuqratiyyah wa Musharakat al-Muslim fi al-Intikhabat* (a paper presented to the sixteenth session of the Islamic *Fiqh* Council, Makkah 1422 AH, 2001).
- Wahbah al-Zuhaili, ‘Musharakat al-Muslim fi al-Intikhabat’.

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82. WOMEN AND THE VOTE

Similar Questions

- Women's participation in the political process;
- Women taking part in elections.

The Issue

What is the Islamic view on women voting in elections in countries where Muslims are a minority community?

Ruling

Muslim women may participate in public affairs, including voting in elections, provided that they observe the Islamic requirements of dress and decorum. They should do so in accordance with what their circumstances allow, what is consistent with their nature and what serves the interests of the Muslim community. Proper policies and procedures should be in place to prevent any harm resulting from such participation. This ruling is endorsed by the Assembly of Muslim Jurists of America (Decision 2-4) and the European Council for Fatwa and Research (Decision 5-16).

Evidence

The normal ruling is that this is permissible and there is nothing that prevents such participation as long as the rules of propriety and decorum are observed.

Moreover, this comes under the objectives of Islamic law to bring benefit and prevent harm.

Sources

- Decisions by the Assembly of Muslim Jurists of America.

- Decisions by the European Council for Fatwa and Research.
- Abd al-Kareem Zaidan, *Al-Dimuqratiyyah wa Musharakat al-Muslim fi al-Intikhabat* (a paper presented to the sixteenth session of the Islamic *Fiqh* Council, Makkah 1422 AH, 2001).
- Wahbah al-Zuhaili, ‘Musharakat al-Muslim fi al-Intikhabat’.

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83. PUBLIC DEMONSTRATIONS IN COUNTRIES OF MUSLIM MINORITIES

Similar Questions

- Public demonstrations;
- Mass demonstrations;
- Public meetings;
- Public sit-ins.

The Issue

In democratic countries peaceful public demonstrations are considered an acceptable way of making views heard and influencing political decisions. In countries where Muslims are a minority community, this is a way of publicizing views and interests.

Ruling

The right to organize peaceful demonstrations is recognized in Western countries and the law establishes how it should be exercised so it does not degenerate into chaos and damage public property and facilities. Those who seek to stage a demonstration are given permission and protection, therefore some *Fiqh* councils consider it lawful for Muslims. The Assembly of Muslim Jurists of America endorses this view.

Evidence

Demonstrating, as practised in Western countries, may be a way of protesting against wrongs and ensuring public interest for Muslims in many situations and issues. Indeed, to refrain from doing it may lead to a loss of Muslims' rights and interests.

The decision adopted by the Permanent Committee for Research and Fatwa applies to Saudi Arabia and similar Muslim countries, as it is a country governed by Islamic law. Assuming the highest post in Saudi Arabia is based on a public pledge of loyalty, not on elections, and the King rules according to Islamic law and not man-made laws. The laws and regulations of the Kingdom of Saudi Arabia do not include any provisions allowing demonstrations and sit-ins, as it is the case in countries with Muslim minorities. Therefore, the decision of the Permanent Committee for Research and Fatwa states: 'The Committee confirms the prohibition of demonstrations in this country because the proper way to ensure benefit and prevent harm is to give advice.'[135]

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Muhammad al-Khamees, *Al-Muzaharat wal-I[tisamat wal-Idrabat*.
- Anas Abu al-Ata, *Dawabit al-Muzaharat*.

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[135] Decision by the Permanent Committee for Research and Fatwa No. 239, dated 27/4/1431 AH, 2010.

84. INTERFAITH DIALOGUE

Similar Questions

- Relations with other faiths;
- Meetings with representatives of other religions;
- Conflict with other religions.

The Issue

Muslims living in non-Muslim countries may meet and enter into dialogue with representatives of other faiths to discuss various questions and issues. This may take the form of seminars, conferences, and meetings with others, including what has come to be known as interfaith dialogue.

Ruling

Meetings with representatives of other faiths are subject to different rulings because some such meetings are permissible and others are not. If they are meant to advocate the divine faith and explain its truth they are perfectly lawful. If they aim to achieve peaceful coexistence with other faiths so that people are safe and they can go about their work and travel in safety, or to draw up an agreed formula to ensure people's common interests are served, particularly between those living within the same region or having common grounds that need such cooperation, they are again lawful and there is absolutely no harm in that. On the other hand, if such meetings are intended to achieve some mixing between religions and establish a common framework of faith that distorts their ideological characters, then such meetings are forbidden.

Participation in such meetings should be limited to knowledgable individuals who are capable of debate, they should not be open to ordinary people with little knowledge of Islam. The principle that governs dialogue with people of earlier divine religions is that it should be conducted in the most kindly manner, except for those of them who are intent on wrongdoing. Its aim is to prove the truth and provide guidance and as such it should be conducted well, observing good manners at all times.

This is endorsed by the Assembly of Muslim Jurists of America and the European Council for Fatwa and Research, and stated by Shaikh Abd al-Azeez ibn Baz and Shaikh Muhammad ibn Uthaimeen.

The European Council for Fatwa and Research suggests that the phrase 'Closing gaps between religions' should be abandoned and replaced by words like dialogue and cooperation.

In its Decision 14-5, the Assembly of Muslim Jurists of America states that there is no harm in arranging such meetings in mosques or in the places of worship of other religions, provided that the sanctity of mosques is observed and there is no disturbance of worshippers. It is also permissible for Muslims to offer their prayers, when due, in the places of worship of other religions, but they must not be facing statues. Muslims may permit others to worship in their mosques, so long as this does not become a habit and common practice. The rules and objectives of Islamic law provide ample evidence in support of this.

If any non-Muslim wishes to participate with Muslims in their prayer, he should be allowed to do so if it is deemed that this wins his goodwill. However, such people should stand in a row of their own or at the end of a row with Muslims, so that the row is uninterrupted. It is agreed that belief is a condition for the validity and acceptability of all actions.

Nor is there any harm in exchanging gifts in such meetings, provided that it does not prevent something right or permit something wrong. Exchanging gifts is an aspect of fairness which we are commanded to maintain when dealing with non-Muslims who are at peace with us.

Some meetings may start or conclude with a common supplication. There is no harm in this as long as the supplication is addressed to none other than God and does not include any phrases that associate partners with God. We have reports that non-Muslims were welcomed to attend the prayer for rain alongside Muslims.

Meetings of this type may include common activities, which may contain elements of worship or be of a general nature. It is not permissible for Muslims to participate in activities that have a worship nature, because these are either inventions that cannot be sanctioned or are contrary to God's oneness. There is no harm in participating in common activities of a general nature as this is likely to bring people closer together and build bridges between them.

It is perfectly appropriate in such meetings to forge an alliance to support anyone suffering injustice, or to cooperate in the common good. The al-Fudul alliance, in which the Prophet participated, and the Madinah Document, which was established by the Prophet as the first written constitution in human history, provide ample evidence for the legitimacy of such an alliance.

Leaders of the Muslim community should maintain such interfaith meetings and train people to participate in them.

Evidence

Dialogue between the message of Islam and other divine messages is acceptable, as God gives us the following order: 'Call people to the path of your Lord with wisdom and goodly exhortation, and argue with them in the most kindly manner. Your Lord knows best who strays from His path and who are rightly guided.' (16: 125) He also says: 'Say: "People of earlier revelations. Let us come to an agreement which is equitable between us: that we shall worship none but God, that we shall associate no partners with Him, and that we shall not take one another for lords beside God." And if they turn away, then say: "Bear witness that we have surrendered ourselves to God."' (3: 64)

The Prophet's Sunnah follows such a dialogue when he had a debate with the Christians from Najran and others.

The message of Islam differs from other divine messages in certain well-known principles and details. However, there are several others in common, such as the beliefs in God, prophethood, the Day of Judgement, moral principles, the basis of social structure – such as the family – protecting the environment, human rights, upholding justice for weaker communities, opposition to tyranny and injustice at all national and international levels, tolerance, opposition to fanaticism, aggression and genocide. Several aspects make dialogue with the people of other faiths more important, such as combating the spread of materialism and the atheist philosophy and the weakening of social bonds through the communications revolution that has transformed the world into a ‘village’ that shares the same destiny.

On the other hand, if dialogue aims to eliminate differences between faiths and dilute their distinctive principles and beliefs in order to establish a common ground, one that puts God’s oneness alongside the Trinity and mixes up the concept that sees God as unlike any other with those that liken Him to creatures, then this is rejected outright by Islam, God’s final and complete message. God says: ‘Hence, judge between them in accordance with what God has revealed and do not follow their vain desires and beware of them lest they tempt you away from any part of what God has revealed to you.’ (5: 49)

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Decisions of the European Council for Fatwa and Research.
- *Fatawa al-Aqaliyyat al-Muslimah* by a group of scholars.
- *Fatawa al-Da[wah*, a selection of fatwas by Shaikh Abd al-Azeez ibn Baz.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.

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85. NON-MUSLIMS IN MOSQUES

Similar Questions

- Non-Muslims attending lectures and meetings held in mosques;
- Inviting non-Muslims to come to the mosque.

The Issue

What is the ruling concerning the admittance of non-Muslims into mosques, for example to attend a lecture or a meeting, or to participate in a debate, in a minority Muslim country?

Ruling

It is permissible for non-Muslims to come into mosques when something of benefit may result from such attendance, such as participating in meetings or listening to what Islam advocates, which may encourage them to accept Islam. It is important, however, that the sanctity of the mosque is preserved and that there is no disturbance of worshippers.

This view is endorsed by the Assembly of Muslim Jurists of America and the Permanent Committee for Research and Fatwa.[136]

Evidence

Thumamah ibn Athal was taken captive and the Prophet kept him in the mosque. When he was released, he embraced Islam. (Related by al-Bukhari, *hadith* No. 462; Muslim, *hadith* No. 1,764)

The normal ruling is that the entry of non-Muslims into the mosque is permissible and there is nothing to suggest that it is not.

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[136] Decision 14-5 of the Assembly of Muslim Jurists of America; Fatawa by the Permanent Committee for Research and Fatwa, vol. 2, p. 116.

Sometimes there is need for admitting such people into mosques, for example they may listen to something that inclines them to accept Islam or they may need to have a drink of water, which is available in mosques.

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.

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86. NON-MUSLIMS TAKING PART IN ISLAMIC PRAYER

Similar Questions

- Non-Muslim praying with Muslims;
- Allowing non-Muslims to pray alongside Muslims.

The Issue

A non-Muslim may come into the mosque to attend a lecture or a meeting, and then he may wish to take part in Islamic prayer.

Ruling

If a non-Muslim wishes to take part in Islamic prayer alongside Muslims he must not be prevented, particularly if it is felt that this will incline him towards Islam. However, he should be in a separate row or at the end of a row, so that the rows are not interrupted. It is generally agreed that belief is a condition for the validity and acceptability of all actions.

This view is endorsed by the Assembly of Muslim Jurists of America (Decision 14-5) and by Shaikh Abd al-Azeez ibn Baz.[137]

Evidence

This is something that is likely to win his good will and it may lead to such a person accepting Islam.

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Abd al-Azeez ibn Baz, *Majmu[Fatawa wa Maqalat Mutanawi[ah*.

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[137] Ibn Baz, *Majmu[Fatawa wa Maqalat Mutanawi[ah*, vol. 8, p. 356.

87. RELIGIOUS COEXISTENCE

Similar Questions

- Interfaith dialogue;
- Inter-communications with other religious groups.

The Issue

Religious coexistence is an ambiguous term that means several things, including peaceful coexistence between the followers of different religions and agreeing a formula that ensures the common interests of all groups, particularly those living in the same regions or having common interests that require their cooperation. It may also mean trying to concoct something out of different faiths, or putting together a common religious framework that dilutes the distinctive beliefs of different religions.

Ruling

Please refer to the earlier question, 'Interfaith Dialogue'.

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88. HELPING NON-MUSLIM SOLDIERS

Similar Questions

- Helping an army of non-Muslims;
- Helping non-Muslims in war.

The Issue

What is the ruling concerning actions that involve helping non-Muslim soldiers in their war? Such a war may be against non-Muslims or it may involve fighting Muslims, occupying their countries or besieging them.

Ruling

If the help given to non-Muslim soldiers is to further goodness and piety and may bring some benefit to Muslims, then it is permissible. However, if such help aids them in injustice and aggression then it is forbidden, as is the case of fighting with them against Muslims.

This is the ruling given by the Permanent Committee for Fatwa at the Assembly of Muslim Jurists of America and published on the Assembly's website at www.amjaonline.com.

Evidence

The Qur'anic verse that says: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression.' (5: 2) Therefore, whoever tries to promote righteousness and piety may be helped and whoever pursues evil and aggression may not be helped.

For example, the Muslims who immigrated to Abyssinia in the early days of Islam helped Negus and fought alongside him against those who rebelled against him.

Sources

- Fatawa by the Assembly of Muslim Jurists of America.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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89. RESIDENCE IN NON-MUSLIM COUNTRIES

Similar Questions

- Immigration to non-Muslim countries;
- Residence in the countries of unbelievers.

The Issue

A Muslim may leave a Muslim country to live in a non-Muslim one. This may have an influence on his faith and allegiance.

Ruling

Scholars have expressed two different views on this question.

The first view says that a Muslim leaving a Muslim country to live in a non-Muslim one is permissible provided that he is able to declare his faith without being harmed and does not fear to yield to temptation. The permissibility is even more valid if he is able to strengthen the condition of Muslims there and provide them with knowledge and advocacy of Islam. Otherwise, it is not permissible. This is the view expressed by Shaikh Abd al-Azeez ibn Baz, Shaikh Muhammad ibn Uthaimeen, Shaikh Abdullah ibn Jibreen and Shaikh Salih al-Fawzan.[138]

This view is endorsed by the European Council for Fatwa and Research, which goes further to say that such residence is recommended if the Muslim concerned can positively participate in society and introduce the great features of Islam and its high moral standards. It considers such residence obligatory if the other option is likely to cause harm or have clear adverse effects and he can repel such effects.[139]

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[138] Ibn Baz, *Fatawa al-Da[wah*, vol. 4, p. 34; Ibn Uthaimeen, *Fatawa al-Da[wah*, vol. 3, p. 139 and *Liqa' al-Bab al-Maftuh*, p. 57; Ibn Jibreen, *Fatawa al-Aqaliyyat al-Muslimah*, pp. 37–8; S. al-Fawzan, *Al-Muntaqa*, vol. 1, p. 269.

Evidence

The first view considers that when a Muslim is able to practise his faith openly then his residence in a non-Muslim country brings about greater benefit than any likely harm. The benefit includes strengthening the Muslim community, spreading knowledge and advocating the true divine faith, and introducing Islam and its great features, good manners and superior morality to non-Muslims. On the other hand, if a Muslim is unable to practise his faith openly, or if he fears to be tempted or pressured away from his faith, then residence in a non-Muslim country is not permissible. This is based on the Qur'anic verse that says: 'Put no trust in those who do wrong, lest the fire scourge you. You would, then, have none to protect you from God, nor would you find any help.' (11: 113) God also says: 'Believers! Do not take the unbelievers for your allies in preference to the believers. Do you want to place before God a manifest proof against yourselves?' (4: 144) The Prophet says: 'I disown any Muslim who lives among the idolaters.' (Related by Abu Dawud, *hadith* No. 2,645)

The second view considers it obligatory for a Muslim to leave the land of unbelievers, even though he happens to be a national of such a country. This is the view of Shaikh Nassir al-Albani.

Evidence

In support of the second view, the Qur'anic verse: 'To those whom the angels gather in death while they are still wronging themselves, the angels will say: "What were you doing?" They will answer: "We were oppressed on earth". (The angels) will say: "Was not God's earth so spacious that you might have migrated to settle elsewhere?" Such will have their abode in Hell, a certainly evil end.' (4: 97) The

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[139] Decision 3-16 of the European Council for Fatwa and Research.

Prophet says: ‘I disown any Muslim who lives among the idolaters.’ (Related by Abu Dawud, *hadith* No. 2,645) The Prophet also said to someone: ‘I will accept your pledge that commits you to worship God alone, to attend regularly to your prayers, to pay the zakat, offer good advice to Muslims and part with the unbelievers.’ (Related by al-Nassa’i, *hadith* No. 4,177)

Sources

- Decisions of the European Council for Fatwa and Research.
- *Fatawa al-Da[wah*, a selection of fatwas by Shaikh Abd al-Azeez ibn Baz.
- *Fatawa al-Da[wah, a selection of fatwas by Shaikh Muhammad ibn Uthaimeen*.
- Muhammad ibn Uthaimeen, *Liqa’ al-Bab al-Maftuh*.
- Salih al-Fawzan, *Al-Muntaqa*.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Imad ibn Amir, *Al-Hijrah ila Bilad Ghayr al-Muslimin*.
- Nassir al-Albani, *Silsilat al-Ahadith al-Sahihah*.

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90. CITIZENSHIP IN NON-MUSLIM COUNTRIES

Similar Questions

- Holding citizenship of a non-Muslim country;
- Residence outside the land of Islam;
- To be naturalized in a non-Muslim country.

The Issue

Citizenship is defined as a mutual relationship between the members of a human community living on the same land with the framework of a constitution, regulations and laws which determine the rights and duties of such individuals. How can a Muslim be a citizen of a non-Muslim country, or permanently reside there, and reconcile the requirements of citizenship with the essential principles of Islam?

Ruling

There is no harm in being a citizen of a non-Muslim country, whether one is an original citizen or naturalized. Muslims are duty-bound to honour the conditions of residence and citizenship in the countries where they live as Muslim minorities, provided that these do not threaten their Islamic identity.

Among the most important duties of Muslims is to believe that the life and honour of non-Muslims have sanctity, to abide by the law of the land and to remain committed to moral values such as justice and cooperation in good causes. They must also do their best to raise their children as Muslims and establish schools and educational centres for the purpose.

It is perfectly appropriate for Muslims to contribute to social, political and economic activities that do not contravene basic Islamic principles. This applies more strongly if citizenship requires such participation.

Decisions 1-17 and 4-16 of the European Council for Fatwa and Research and Decision 155 (4-17) of the International *Fiqh* Academy endorse this ruling.

Evidence

The fact is that most of the laws and regulations in non-Muslim countries ensure rights of citizenship and residence. These include the freedom of belief and practising one's religion. As such there is no reason to prevent belonging to such countries so long as they guarantee freedom of belief.

God says: 'Believers, be true to your contracts. Lawful to you is the [flesh of the] beasts of cattle, other than that which is announced to you herein. But you are not allowed to hunt while you are in the state of consecration. God decrees what He will.' (5: 1) He also says: 'Be true to all your promises, for you will be called to account for all that you promise.' (17: 34) Citizenship imposes conditions and commitments which must be honoured as the general meaning of both these verses make clear.

Citizenship does not contravene the Islamic principle of loyalty. The fact that a Muslim lives in a non-Muslim country does not impose on him any contravention of the teachings of his faith.

Naturalization will be discussed under a separate heading.

Sources

- Decisions of the European Council for Fatwa and Research.
- Decisions of the International *Fiqh* Academy.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

91. SUPPORTING JUST CAUSES

Similar Questions

- Helping the oppressed;
- Supporting those suffering injustice.

The Issue

Muslims in minority communities may need to help those who are suffering injustice to obtain their rights and help them in removing injustice, resorting to legal and Islamic means. In order to do so they may resort to all means available to ensure the removal of injustice.

Ruling

It is the duty of a Muslim to support his Muslim brother. This duty may be a collective one, in which once support is given in sufficient measure the duty is rendered to have been discharged, or it may be a personal one, when the support is not enough without him and he is able to give it. Moreover, Islam is opposed to injustice and provides support to those who suffer injustice, regardless of their nationality, race or religion. Every means of support, whether political, financial or informational, may be given if needed to achieve the legitimate objectives, provided that the means itself is permissible and its use does not lead to harm. It should also be legal in the country where it is used and giving such support should not mean neglecting more important duties. This ruling is expressed in Decision 6-16 of the European Council for Fatwa and Research.

Evidence

Supporting those who suffer injustice is a main principle of Islam. ‘The Prophet says: “Support your brother whether he inflicts or suffers injustice.” People asked: “Supporting the one suffering injustice is fine. How can we support the one inflicting injustice?" The Prophet said: "By stopping him from doing injustice you support him."' (Related by al-Bukhari, *hadith* Nos 2,444 and 6,952; Muslim, *hadith* No. 2,584) The Prophet also mentions that the rights of every Muslim include that he must not be exposed to injustice, given away or let down.

When the Prophet was still a young man, long before the start of the message of Islam, he took part in the al-Fudul alliance which aimed to support anyone who suffered injustice and help him to regain his rights.. Yet when the Prophet mentioned it later, after he was given his message, he said: 'If I am invited to take part in a similar alliance I will certainly do.' (Related by al-Bayhaqi, *hadith* No. 13,232)

Sources

- Decisions of the European Council for Fatwa and Research.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.

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92. INTEGRATION IN NON-MUSLIM SOCIETY

Similar Questions

- Assimilation in society;
- Co-existence.

The Issue

When a Muslim lives in a non-Muslim country he is exposed to integration or assimilation in society. This may result in shedding some religious and cultural aspects that are essentially Islamic. What should be a Muslim's attitude to integration? Can integration be achieved while retaining such essentials?

Ruling

The policies of integration adopted by countries with Muslim minorities follow one of two courses: The first wants complete integration, even though it may require the people to be integrated to discard their distinctive religious and cultural characteristics, while the other strikes a balance between complete integration and the need to preserve such distinctive characteristics. This second course reflects positive integration and it is a responsibility shared by the Muslim community and the rest of society.

The second course is endorsed by the European Council for Fatwa and Research in its Decision 2-17. In this decision, the Council points out some aspects of positive integration which Islam encourages. On the part of the Muslim community these include:

- The need to learn the language, traditions and values of the society where a Muslim lives and to abide by the laws of the land. God says: 'Believers, be true to your contracts.' (5: 1)
- Participation in society with a keen desire to serve the general

interest of society and in fulfilment of the divine order to all believers: ‘Do good, so that you might be successful.’ (22: 77)

- To endeavour to reduce unemployment so that every Muslim can be an active contributor to society. This is necessary to implement the *hadith* which quotes the Prophet as saying: ‘The upper hand is better than the lower hand: the upper hand is the one that gives help and the lower hand is that which begs.’ (Related by al-Bukhari and Muslim)

Positive integration of the Muslim community into a non-Muslim society requires society to ensure the following:

- To endeavour to ensure justice and equality for all citizens with regard to both rights and duties, and to ensure in particular freedom of expression, freedom to practise religion and the maintenance of social rights.
- To stamp out all aspects of racism and combat whatever encourages hostility to Islam.
- To encourage initiatives that promote mutual awareness of the religious and cultural characteristics between Muslims and non-Muslims so as to increase and strengthen interaction in society.

To ensure a balanced and positive integration, the Council urges Muslims to keep their Islamic identity without isolating themselves or allowing themselves to be totally assimilated. They are urged to establish the educational and social institutions that are needed for such positive integration and to carry out the task of advocacy of their faith.

The Council also urges non-Muslim societies, particularly the institutions concerned with the question of integration, to pursue an open policy towards Muslims and to maintain contacts with Muslim institutions so that the proper needs of integration may be studied and facilitated. This will benefit society and help Muslims to retain their Islamic character.

The concluding statement of the nineteenth session of the European Council for Fatwa and Research reiterated its earlier recommendations, appealing to all Muslims living in Europe to:

1. Fulfil all duties and give a good image and the right example in whatever they say and do and how they behave;
2. Play their role in encouraging creativity and inventiveness at all levels;
3. Exert their best efforts in giving their children a proper and modern Islamic upbringing. To this end they should establish schools, educational institutions and community centres to help them keep their Islamic identity;
4. Endeavour to establish financial companies and institutions that adhere to the Islamic code of practice;
5. Seek to establish Islamic institutions to regulate their personal and family affairs in accordance with the provisions of Islamic law while observing the law of the land;
6. Endeavour to obtain official recognition from their countries of residence of Islam as a faith and Muslims as equal citizens with full rights, and recognition of their right to regulate their family affairs, such as marriage and divorce, according to their faith;
7. Fulfil their duties as citizens and their obligations under the contract that gives them permission of residence, and to abide by the law of the land in their countries of residence, as is clearly indicated in the Qur'an and the Sunnah and unanimously agreed by Islamic scholars;
8. Refrain from resorting to violence in any shape or form. They must maintain a course of compassion, mercy and wisdom in their dealings with all people as they are required to do by their faith. They must condemn any practice that is contrary to this proper Islamic way.

The Council urges Muslims generally and those living in Europe in particular to hold fast to their bond with God, to maintain brotherhood, to be tolerant and to take the middle path of Islam, helping one another to further righteousness and piety, to conduct healthy debate and take peaceful measures in dealing with disputes.

They should steer away from extremism and all its aspects that give a negative image of Islam and cause great harm to Muslims. Such methods are taken up by those who are hostile to Islam and make use of it to encourage islamophobia. They must always remember God's commandment: 'Call people to the path of your Lord with wisdom and goodly exhortation, and argue with them in the most kindly manner.' (16: 125)

Sources

- Decisions by the European Council for Fatwa and Research.
- Nadia Mustafa, *Fiqh al-Aqaliyyat al-Muslimah Bayn Fiqh al-Indimaj wal-Muwatanah wa Fiqh al-[Uzlah*.

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93. FORMATION OF ISLAMIC INSTITUTIONS

Similar Questions

- Formation of religious councils;
- Establishment of Islamic centres and societies.

The Issue

Muslims living in non-Muslim countries may seek to establish religious councils or official Islamic societies to regulate their personal affairs in accordance with the provisions of Islamic law.

Ruling

Muslims living in non-Muslim countries are encouraged to unite and cooperate. They can achieve this through the establishment of religious councils, institutions or Islamic societies that undertake the regulation of their personal and family affairs in accordance with the provisions of Islamic law while at the same time observing the law of the land. This is the ruling of the Permanent Committee for Research and Fatwa[140] and it is included in the recommendations of the second session of the European Council for Fatwa and Research.

The European Council for Fatwa and Research urges Muslims to exert serious effort to obtain official recognition in their countries of residence of Islam as a faith and Muslims as a religious minority, like other religious minorities, with full rights to organize and regulate their own family affairs such as marriage, divorce and inheritance.

Evidence

To do this is to implement God's order to help one another in furthering righteousness and piety, as God has commanded Muslims: ‘Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression.’ (5: 2)

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[140] Fatawa by the Permanent Committee for Research and Fatwa, vol. 23, p. 407.

Sources

- Fatawa by the Permanent Committee for Research and Fatwa.
- Decisions of the European Council for Fatwa and Research.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.

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94. NATURALIZATION IN A NON-MUSLIM COUNTRY

Similar Questions

- Holding the nationality of a non-Muslim country;
- Naturalization.

The Issue

A Muslim who resides in a non-Muslim country but was not born a citizen may seek to obtain its nationality so that he may have the full rights of citizenship. As such he will have to abide by the commitments of such nationality. He may do so because it is difficult or unsafe for him to return to his home country and he wishes to settle in his country of residence.

Ruling

Contemporary scholars differ in their rulings on the question of acquiring the nationality of a non-Muslim country.

The first view considers the acquisition of the nationality of a non-Muslim country to be forbidden. This is agreed by many contemporary scholars including Muhammad Rasheed Rida and Abd al-Hameed ben Badis.[141]

Evidence

The advocates of this view cite in evidence the Qur'anic verses:

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[141] Imad ibn Amir, *Al-Hijrah ila Bilad Ghayr al-Muslimin*, p. 278; M. al-Subayyil, '*Hukm al-Tajannus bi Jinsiyyat Dawlah Ghayr Islamiyyah*', p. 35; *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*, p. 79.

'Whoever of you allies himself with them is indeed one of them. God does not bestow His guidance on the wrongdoers.' (5: 51) 'Believers, do not take your fathers and brothers for allies if they choose unbelief in preference to faith. Those of you who take them for allies are indeed wrongdoers.' (9: 23) They say that whoever acquires the nationality of a non-Muslim country will be required to change his affiliation from a Muslim country to a non-Muslim one, which is one of the most important marks of alliance. The Prophet says: 'I disown any Muslim who lives among the idolaters.' (Related by al-Tirmidhi, *hadith* No. 1,654) He also says: 'Do not live in the same quarters as the idolaters, and do not socialize with them. Whoever lives with them is like them.' (Related by al-Tirmidhi, *hadith* No. 1,655) These *hadiths* show that living with the unbelievers is forbidden and it is obligatory that one should leave them.

The scholars argue that naturalization requires the one adopting the nationality of a non-Muslim country to be subject to all of the laws and regulations of that country with regard to how he conducts his life. However, most of these laws and regulations are based on unbelief and are in direct opposition to Islamic law, such as permitting adultery, usury and apostasy in the name of freedom and human rights.

Furthermore, when a person acquires the nationality of a country he is obliged to defend that country and to join its army when she is at war with another country, even though the other country may be Muslim. It is well known that it is not permissible to place one's trust in unbelievers and those committing injustice, and it is also forbidden to aid those who commit evil and aggression. Most importantly it is a grave sin to help unbelievers who are fighting Muslims.

The second view allows a Muslim to acquire the nationality of a non-Muslim country in several cases, such as fleeing persecution and injustice, having no alternative that allows him to live in a Muslim country or to earn a decent living, which may be very hard in the home country. It is also permissible if it serves the interests of Islam and Muslims by being able to advocate Islam freely, practise it without pressure and maintain one's Islamic identity and loyalty to the Muslim community. On the other hand, if naturalization causes harm rather than bringing benefit, as in the case of one who admires unbelievers and identifies himself with them, then it becomes forbidden. Several contemporary scholars endorse this view, such as Shaikh Muhammad ibn Uthaimeen and Shaikh Abdullah ibn Jibreen.[142]

Evidence

In support of this view, scholars cite the Qur'anic verse: 'As for anyone who denies God after having accepted the faith – and this certainly does not apply to one who does it under duress while his heart remains true to his faith, but applies to him who willingly opens his heart to unbelief – upon all such falls God's wrath, and theirs will be a tremendous suffering.' (16: 106) The verse makes clear that under compulsion a Muslim may say that he rejects Islam while his heart remains true to his faith, so in cases of duress he may obtain the nationality of a non-Muslim country to protect himself, his faith, his property or his family. Islam always considers the greater benefit and thus allows choosing the lesser evil in order to ensure the greater good. So to be naturalized in a non-Muslim country involves some harm but it brings much greater benefits. Indeed, what is better or more important than being able to advocate Islam freely?

When a person acquires the nationality of the country he lives in he also acquires strength and a better position in society. He is better able to demand his full rights, his affairs are set on a proper course and he is able to enjoy his basic rights, something which people in Muslim countries are often denied. To reside in a non-Muslim country is perfectly permissible if one is able to practise his faith and maintain his Islamic identity. It ensures security for oneself and one's family and honour. Naturalization adds little more than becoming a subject of the country.

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[142] Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 112; Ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*, p. 138; K. Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*, pp. 207–8; A. Bin Bayyah, *Sina[at al-Fatwa*, p. 285.

Advocates of this second view respond to the first view by saying that naturalization does not mean taking unbelievers as allies. A naturalized person formally belongs to the country that has granted him nationality, but his heart and allegiance remains Muslim and he will continue to abide by the laws of Islam. The *hadiths* that prohibit living among unbelievers are understood to apply when a Muslim is unable to practise his faith or fears persecution on account of his faith. In such cases, he must not reside among unbelievers.

As for being subject to laws that are contrary to Islamic law, such laws are now commonplace in many Muslim countries and a naturalized person commits himself not to refer to these laws for judgement except in a situation of absolute necessity.

With regard to serving in a non-Muslim army, most countries do not enforce conscription and even in the case when a naturalized Muslim is forced to fight against Muslims he may abstain from doing so, even if he endangers his own life as a result.

Sources

- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Abdullah ibn Jibreen, *Al-Mufid fi Taqrib Ahkam al-Musafir*.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Imad ibn Amir, *Al-Hijrah ila Bilad Ghayr al-Muslimin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Muhammad al-Subayyil, 'Hukm al-Tajannus bi Jinsiyyat Dawlah Ghayr Islamiyyah'.

95. TAKING UNBELIEVERS' MONEY

Similar Questions

- appropriating unbelievers' money;
- Stealing unbelievers' property;
- Considering unbelievers' property lawful to take away.

The Issue

Some Muslims in non-Muslim countries may resort to tricks and deceive non-Muslim individuals, companies or authorities to take their money or property. This may be in non-payment of what they owe to non-Muslims or tax avoidance. They justify their action by saying that they want to weaken the country or that as these people are unbelievers their property is lawful to take.

Ruling

It is not permissible to take the money or property of unbelievers with whom one has a contract or a pledge, except in what is right and legal. Such a contract exists in the very document of citizenship or residence which allows Muslims to stay in a country, whether he is an immigrant or a visitor. The same applies to ethnic Muslims through the common agreement of citizenship that is applicable to everyone, whether Muslim or non-Muslim.

This view is expressed by the Permanent Committee for Research and Fatwa and included in its *Fatawa*.[143]

Evidence

When a Muslim enters a non-Muslim country he is bound by a pledge of safety, which is the visa that permits him to enter. If he takes some money from non-Muslims without being entitled to it, he is in breach of that pledge. God says: ‘Be true to all your promises, for you will be called to account for all that you promise.’ (17: 34) ‘Believers, be true to your contracts.’ (5: 1) The Prophet says: ‘Three qualities mark out a hypocrite: he lies when he speaks; he breaks his promise; and he is untrue to his trust.’ (Related by al-Bukhari, *hadith* No. 33; Muslim, *hadith* No. 59)

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[143] Vol. 23, pp. 441–7 and vol. 26, p. 311.

Al-Shafi[i said: ‘If a Muslim enters a land of war [...] and he finds himself able to take some of their property, it is unlawful for him to take anything, great or small. If he is safe with them then they are also safe with him. Under such an arrangement of safety, nothing is lawful to him from them except as is lawful for him to take from Muslims or those under Muslim protection.’[144]

An authentic *hadith* mentions that al-Mughirah ibn Shu[bah accompanied some people before he became a Muslim. He killed them and took their property. He then came to the Prophet and adopted Islam. The Prophet told him: ‘As for your acceptance of Islam, I accept it; but I will take nothing of this property.’ (Related by al-Bukhari, *hadith* No. 2,731) Another version quotes the Prophet as saying to him: ‘As for Islam, we accept; and as for the property, it came through treachery and we refuse to take it.’ (Related by Abu Dawud, *hadith* No. 2,765)

Ibn Hajar says in comment: ‘It makes clear that it is unlawful to take through treachery the property of unbelievers with whom one has been living in safety. Companionship implies trust and trust must be fulfilled and delivered to their rightful owners, whether Muslims or unbelievers. However, it is lawful to take the money and property of unbelievers through war and battle. Perhaps in this case the Prophet allowed al-Mughirah to hold on to the property in the hope that his people would embrace Islam and he would give their property back.’[145]

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[144] Al-Shafi[i, *Al-Umm*, vol. 4, p. 284.

[145] Ibn Hajar, *Fath al-Bari*, vol. 5, p. 341.

Sources

- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Al-Shafi[i, *Al-Umm*.
- Ibn Hajar, *Fath al-Bari*.
- *Fatawa*, by the Permanent Committee for Research and Fatwa.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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96. DODGING THE LAW

Similar Questions

- Breaking the law;
- Wilful breach of the law;
- Disregarding the law.

The Issue

Some Muslims in minority communities are ready to dodge laws or public regulations when there is need, even when such laws and regulations are not contrary to Islamic law. A case in mind is a Muslim who signs the rent agreement of a flat or house in his own name on behalf of someone else who does not meet the conditions of the owner.

Ruling

It is not permissible to dodge the law or circumvent regulations in this way when a Muslim is committed to them and there is no difference if the other party to the contract is a Muslim or a non-Muslim. This is the view of the Permanent Committee for Research and Fatwa in Saudi Arabia, Shaikh Muhammad ibn Uthaimeen and the General Secretary of the Assembly of Muslim Jurists of America.[146]

Evidence

The Prophet says: ‘Three qualities mark out a hypocrite: he lies when he speaks; he breaks his promise; and he is untrue to his trust.’ (Related by al-Bukhari, *hadith* No. 33; Muslim, *hadith* No. 59)

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[146] Fatawa by the Permanent Committee for Research and Fatwa, vol. 23, p. 448; Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 119; also, pp. 44–5.

Islam attaches great importance to contracts and there is no difference when a contract is made with a Muslim or a non-Muslim. God says: ‘Believers, be true to your contracts. Lawful to you is the [flesh of the] beasts of cattle, other than that which is announced to you herein. But you are not allowed to hunt while you are in the state of consecration. God decrees what He will.’ (5: 1) He also says: ‘Be true to all your promises, for you will be called to account for all that you promise.’ (17: 34) The other party to a contract has made it with a Muslim on the basis of commitment.

Such action includes deception and telling lies. These are certainly forbidden in Islam.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.

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SECTION 8: BUSINESS TRANSACTIONS

97. FINANCE THROUGH REDUCING PARTNERSHIP

Similar Questions

- Buy to let for financing purposes;
- Reducing partnership with lease.

The Issue

Reducing partnership may take different forms. The one meant here is a reducing partnership with a lease (lease-to-purchase). This means purchase to let in order to finance buying houses, cars, equipment, etc. It involves a combination of joint ownership, lease and sale. The goods are bought by the party providing finance for the client with a promise by the financing party to sell its share to the client in stages, on the basis of consecutive sale agreements. The client will hire from the financing party the share not yet bought until the ownership is completely transferred to the client.

Ruling

Reducing partnership is permissible provided that the financing party sells his share, or part thereof, at a price to be agreed at the time of each sale agreement. It is not permissible to promise to buy a share at its price at the time of establishing the partnership (i.e. its nominal value). This is made clear in a statement issued in the fourth session of the Assembly of Muslim Jurists of America. The statement warned some Islamic companies in America against certain irregularities in such transactions. It says: ‘Some Islamic finance companies in America declare that they implement the transaction of lease-to-purchase in this explained form. However, on studying the contracts of these companies it appears that the contract is merely a usurious loan, providing money at interest. As such, these are not contracts of partnership and they are not lawful. Moreover, contracts include the following irregularities:

1. Agreement by the financing party to sell its share to the client at the price paid at the time of entering into the partnership (i.e. its nominal value).
2. The client undertakes to pay all the costs associated with the bought article throughout the duration of the partnership, such as insurance, taxes, maintenance, etc.
3. The client receives all the profit that accrues, and in some partnerships the client bears all the loss, if the article is sold before the end of the term of the partnership.
4. The article is registered in the name of the client alone, without mentioning the financing party as a partner. It is also stated that the return paid to the financing party is interest.
5. Stipulating lease and sale in the partnership agreement.'

Muslims living in the West should exert every effort to establish Islamic alternatives in the area of investment and financing. One such area is to establish an Islamic bank with branches in many American and Western capitals and cities.

Sources

- The website of the Assembly of Muslim Jurists of America (AMJA): www.amjaonline.com.

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98. WORKING IN THE MEDIA

Similar Questions

- The media profession;
- Jobs in the media;
- Working for satellite channels;
- Working in the press, radio and television.

The Issue

A Muslim living in a non-Muslim country may have a job in the press, radio, television or satellite channels as a journalist, announcer or presenter of a radio or television programme. Many of these channels may broadcast certain things that are forbidden in Islam.

Ruling

Working in the media is permissible if it abides by proper Islamic controls. Such work may be subject to any of the five rulings: obligatory, encouraged, permissible, discouraged or forbidden, on the basis of the information being presented, the method of presentation, the consequences it leads to and the ultimate outcome. This is the view of the Assembly of Muslim Jurists of America as expressed in Decision 1-5. The Assembly outlined the following nine controls that must be upheld by Muslims working in the media:

1. Confirming that the information being published or broadcast is accurate and true and avoiding all rumours.
2. Displaying a commitment to truth and objectivity.
3. Observing Islamic behaviour and moral values when presenting information.
4. Respecting confidentiality. Nothing may be released without the permission of the person concerned unless its release is likely to bring about a clear benefit.

5. No information may be published or broadcast, even though it may be true and the person concerned agrees to its release, if such release leads to what Islam censures.
6. All information must be released by legitimate means and all illegitimate ways must be avoided.
7. A Muslim may not work for a media channel that is known to be hostile to Islam if his work helps it in its aggression and hostility.
8. A Muslim must not work for media that is devoted to what is forbidden in Islam, such as pornographic magazines and television.
9. A Muslim woman working in the media must abide by Islamic rulings that apply to women, such as the complying with the dress code, refraining from being in a situation that Islam forbids, always travelling with a close relative or keeping safe company. Her work should be in an area that suits her nature, etc.

Evidence

In its original concept, the essential ruling concerning the media is permissibility. The media serves to transmit knowledge, ideas and behaviour. It contributes to a society's way of thinking, its culture and morality. It also influences public opinion and the decisions taken in all areas of life. The media is also one of the most important means of advocating Islam, which Muslims should undertake at all times and in all places. As such the five rulings that apply to working in the media are based on the information presented, the method of presentation, the consequences it leads to and the ultimate outcome.

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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99. WORKING IN INFORMATION TECHNOLOGY

Similar Questions

- The Information Technology profession;
- Working on databases;
- Legitimate work that may be used for illegitimate purposes.

The Issue

A Muslim living in a non-Muslim country may have a job in information technology (IT) or working with databases, but the service he provides may be used in some forbidden activities.

Ruling

There is no harm in working in IT or with databases if its purpose is originally legitimate. The service may be used when needed, even if it is for some purposes that are legitimate and others that are illegitimate, provided that it is made available to all, that the work is not being used specifically for doing what is forbidden and it does not cause harm to others. This view is endorsed by the European Council for Fatwa and Research (Decision 4-18) and the Assembly of Muslim Jurists of America (Decision 2-5).

Evidence

It is permissible to work in IT, even if the work is used for some legitimate purposes and others not so, because the contract of employment does not specify a particular purpose. The basic point to consider is that working in IT itself is essentially lawful, particularly if the work being done is for everyone and not for a special area or activity which is forbidden. Thus the remote possibility of it being used for unlawful purposes is discounted and the permissibility of the work itself remains intact.

Sources

- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- Decisions by the Assembly of Muslim Jurists of America.

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100. CREDIT CARDS

Similar Questions

- Marketing credit cards and using them;
- Working for a company that issues credit cards.

The Issue

Some banks and companies in non-Muslim countries issue credit cards to use in place of banknotes and coins, so people do not need to carry cash or keep it with them. Hence the question is about using such credit cards for one's purposes, marketing them and working for the companies that issue them.

Ruling

In Decision 3-5, the Assembly of Muslim Jurists of America stresses the importance of credit cards because they can replace normal currency and carrying it around. As such, they are indispensable in our modern life. The decision considers credit cards in detail and what is lawful or unlawful about such cards, citing evidence in each case. It says:

Credit cards are of two types: the first is a card that is linked to the available balance in its holder's account. The relevant company charges a set fee for issuing such a card, which is a permissible way of payment because what is paid through it is taken directly from its holder's account. Therefore using such cards is permissible, as is issuing them and working for the companies that issue or market them.

The other type is a card that is not linked to the account of the holder. There are three categories of such cards: The first is a credit card issued for a set fee that is used to buy goods on credit with a specific means for repayment without incurring interest for late repayment. These are the type of credit cards issued by Islamic banking institutions, though as far as we know, these institutions do not operate in non-Muslim countries. These are perfectly lawful and using them is permissible, as also making them, issuing them and working for companies that issue or market them.

The second category is that of usurious credit cards. These are used to buy on credit with interest incurring on the money so advanced and as such are forbidden in Islam. It is not permissible to make or issue them, nor to work for the companies that issue or market them.

The third category of credit cards give the holder a specific period to settle what he owes without incurring interest. If he does not pay in full when this period is over then interest accrues on the balance. These are not permissible because they include an unlawful condition, hence it is not lawful to make, issue or work for the companies issuing or marketing them. However, a concession is given to those who need to use this type of card in cases of necessity, widespread practice and the unavailability of any alternative. Such use must be coupled with a knowledge that it is within one's ability to repay and a firm intention to do so before any interest accrues.

Working in companies that make, issue or market cards that do not meet the conditions of permissibility remains forbidden because a concession to use something in case of necessity or great need does not apply to working in that industry, except in great necessity.

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Decisions of the European Council for Fatwa and Research.

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101. WORKING FOR INSURANCE COMPANIES

Similar Questions

- Promotion of commercial insurance contracts.

The Issue

A Muslim may work for a commercial insurance company in Muslim minority countries, promoting its products.

Ruling

The normal ruling on commercial insurance contracts offered by insurance companies which work for profit is that these are unlawful. What is permissible are contracts that the law of land make obligatory and what common needs make necessary. To work in promoting or marketing such contracts is only permissible in cases of necessity or in situations of great need that are treated like necessity. Whoever finds it necessary to work in such areas should have the intention to change his job at the earliest opportunity.

Social insurance that is not intended for profit and cooperative insurance that relies on donations and offering services are permissible. Therefore, these may be taken up and Muslims may work in these institutions provided that such institutions abide by Islamic requirements when investing their capital.

This is the view of the Assembly of Muslim Jurists of America (Decision 4-5) and the European Council for Fatwa and Research (Decision 2-18). Exceptions from the prohibition are limited to four cases, as follows:

The first case is that of necessity or a great need that is treated as necessity. This would be the case of a Muslim who cannot find a suitable job except in this type of company or one who has come to know of this ruling only after having been employed and he cannot find a suitable alternative.

The second case is that of a person who has specialized in insurance and cannot work in his field of specialization except in such companies.

The third case is working in administration and services, not in making contracts or promotion.

For any of these three cases to be permissible three conditions apply: (i) The person concerned should have done his best to find legitimate alternative employment without success; (ii) he intends to gain experience; or (iii) he intends to leave such companies once he finds a legitimate and suitable alternative.

The fourth case is that of one who works for such a company and he is able to convert it into a cooperative company that is lawful in Islam, whether he can do so by himself or in cooperation with others.

Evidence

Commercial insurance contracts of are invalid because they lack clarity and involve elements of ignorance and gambling, as well as other aspects that render them invalid. The only types of contracts like these that are permissable are those which involve necessity or a common need that may be treated as necessity. Cooperative insurance, by contrast, is based on mutual help and removal of distress.

A different view was expressed by the late Shaikh Mustafa al-Zarqa who gave a ruling that commercial insurance is permissible. In the Islamic *Fiqh* Week organized by the University of Damascus on 15 Shawwal 1380 AH, 1 April 1961, he presented a paper to this effect. Again He advocated the same view in the tenth session of the Committee of Senior Scholars in Saudi Arabia held on 4 Rabi[II 1397 AH (1987). The session discussed the subject thoroughly and adopted a ruling prohibiting all types of commercial insurance, including life policies and insuring commercial goods. Shaikh al-Zarqa was the only scholar to oppose this ruling.

Sources

- Decisions by the Assembly of Muslim Jurists of America;
- Decisions by the European Council for Fatwa and Research.
- Decision by the Islamic *Fiqh* Academy
- Mustafa al-Zarqa, *Nizam al-Ta'min wal-Ra'y al-Shar[i fih*.

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102. WORKING FOR THE GOVERNMENT

Similar Questions

- Taking up jobs in government departments in non-Muslim countries;
- Government jobs.

The Issue

What is the ruling concerning a Muslim living in a Muslim minority country of taking up a job in a department or ministry of the government of that country, particularly if he works in a particularly important field such as the nuclear industry or strategic studies?

Ruling

It is permissible for a Muslim to work in the departments and institutions of a non-Muslim government if his work is likely to bring benefit and does not lead to causing harm to Muslims. This is the ruling of the International *Fiqh* Academy (Decision 23; 11-3).

Evidence

Normally any lawful work is permissible as long as it does not lead to something that is forbidden. Moreover there may be a need to work for such departments which, whether general or personal, is given the same ruling as necessity.

Sources

- Decisions by the International *Fiqh* Academy.
- Sulaiman Muhammad Topoliyak, *Al-Ahkam al-Siyasiyyah lil Aqaliyyat al-Muslimah fi al-Fiqh al-Islami*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

103. WORKING FOR THE TAX DEPARTMENT

Similar Questions

- Working for Customs and the Tax authority.

The Issue

In non-Muslim countries the government has offices to organize and administer a system to levy taxes on individuals and companies. Can a Muslim work for this type of institution?

Ruling

The Assembly of Muslim Jurists of America says that it is permissible to work for the Tax department providing such work is with the intention of being kind to people, maintain fairness and reduce injustice. It is preferable to leave such work when a suitable alternative is available.

Evidence

This is something that has become very common and hence a concession of permissibility has been given.

Sources

- Decisions of the Assembly of Muslim Jurists of America.
- Decisions of the European Council for Fatwa and Research.

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104. WORKING IN ACCOUNTANCY

Similar Questions

- Working for firms of accountants;
- Working for firms of auditors.

The Issue

A Muslim may work in accountancy, either in firms of accountants or in various types of business. If one is living in a non-Muslim country is such work permissible from the Islamic point of view?

Ruling

Working as an accountant is permissible unless the work is to serve businesses that are forbidden, such as selling wines or pork or for gambling houses. In such cases it is not permissible except in a case of necessity that is acceptable from the Islamic point of view. Such necessity should be assessed on its own merits and measures should be taken to remove it. The person who does such work in a situation of necessity should intend to leave at the first opportunity.

In cases where the permissible and the forbidden are mixed in what an accountant attends to, the verdict differs in each case. If the majority of the work is permissible an exemption is given and the accountant may carry on with this work as required. However, he should dispense with a portion of his income equal to the portion of the forbidden part of his work and he should seek a job that excludes any doubtful sources of income. If the forbidden part of his work outweighs the permissible then the verdict remains one of prohibition, so as not to participate in what is forbidden or to help in doing it, but necessity is considered on its merits and efforts should be made to remove it. In the case of institutions whose activities are mainly in the forbidden areas an exception is made for an accountant whose task is solely to audit financial decisions and does not take part in implementing them. This ruling is endorsed by the Assembly of Muslim Jurists of America (Decision 6-5).

Evidence

An accountant's work is technical using legitimate tools so normally such work is lawful unless there is clear evidence for prohibition.

An accountant may work as an auditor because an auditor checks financial decisions and does not participate in putting them into effect. As such he only reports what takes place in practice.

Sources

- Decisions by the Assembly of Muslim Jurists of America,
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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105. WORKING FOR USURIOUS BANKS

Similar Questions

- Employment in usurious institutions;
- Jobs involving usurious transactions.

The Issue

A Muslim living in a country with a minority Muslim community may be offered a job in a bank where he may be a clerk, a teller, an accountant or an administrator. Since most banking institutions in non-Muslim countries are usurious, is this permissible?

Ruling

Normally, working for a usurious bank is prohibited. This is endorsed by the Permanent Committee for Research and Fatwa and Shaikh Abd al-Azeez ibn Baz.[147]

Decision 7-5 of the Assembly of Muslim Jurists of America suggests making an exception for jobs that do not involve dealing directly with usury, which includes preparing documentation, acting as a witness or providing any help or service, if one needs to take up such a job because one cannot find a legitimate job elsewhere. The decision states: '*Fiqh* councils make an exception for people who cannot find legitimate employment. The exception allows them to work in places where the prohibited is mixed with the permissible provided that the employee does not work directly in what is forbidden. At the same time he should do his best to find a job that involves no doubtful or forbidden activity. The Assembly of Muslim Jurists of

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[147] Fatawa by the Permanent Committee for Research and Fatwa, vol. 15, pp. 46, 57 and 61; A. Ibn Baz, *Majmu[Fatawa Ibn Baz,* vol. 19, pp. 239 and 382–6

America feels that this ruling may be applied to working in usurious banks, making an exemption that allows work in areas that are not directly involved with the documentation of usurious transactions, acting as a witness thereof or providing direct help in it.'

Evidence

The Prophet cursed the person who takes usurious earnings, the one who pays usury, the one who writes the contract between them and the two witnesses to the contract. He said: 'They are all the same.' (Related by Muslim) The prohibition inevitably applies to whoever works in such banks and such work helps to further evil and aggression. God says: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression.' (5: 2)

The Assembly of Muslim Jurists of America makes an exception in the case of not being able to find any alternative employment when one needs it. Necessity is determined on its merits and the exception makes it a condition of not being directly involved in this forbidden activity, including documentation, witnessing, etc.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Fatawa by the Permanent Committee for Research and Fatwa.
- Abd al-Azeez ibn Baz, *Majmu[Fatawa Ibn Baz*, edited by Muhammad al-Shuway'ir.

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106. WORKING AS AN ESTATE AGENT

Similar Questions

- Working in the property market;
- Marketing properties.

The Issue

A Muslim living in non-Muslim countries may work in the field of real estate, in which there are permissible elements and prohibited ones. He may function as an estate agent or as an employee in a firm of estate agents.

Ruling

Under normal circumstances, working as an agent or acting as the middle man on a commission basis is permissible and legitimate, as long as the activities in which one works are of a lawful nature. Acting as an agent when one is certain or nearly so that the ultimate purpose is to use whatever is being bought for a forbidden purpose is not lawful from the Islamic point of view. This is the view expressed in Decision 10-5 of the Assembly of Muslim Jurists of America. The decision adds: 'If a member of staff in a firm is asked to be the middle man working to conclude a deal and he is almost certain that the property being bought will be used for a forbidden purpose, and he cannot refuse to complete the contract and the majority of the functions of his firm are lawful, then he may complete this work as a necessity, because such forbidden activities are infrequent in his work. However, he should always be keen to avoid what is forbidden or reduce it as much as possible. It is also permissible for estate agency firms and individuals to write the contract of sale, even though the buyer may have obtained the funds for the purchase through a usurious loan, since the Muslim member of staff is not accountable for the method by which the buyer has secured his funds. He may not, however, participate in facilitating usurious loans, whether by providing information about the companies providing such loans, or by completing their application forms.’

Evidence

The basic rule regarding estate agency work is that it is permissible as long as the activities are lawful. Such work becomes forbidden if it leads to what is forbidden, because it then becomes helping to further evil and aggression.

Moreover, estate agency work that may lead to something forbidden is given an exemption in cases where the majority of the work of the estate agent is of a permissible nature. Such a concession is given in cases where one has to comply with instructions and the firm rarely takes up such forbidden deals. However one should always try to avoid what is forbidden or keep it to a minimum.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions by the European Council for Fatwa and Research.

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107. WORKING IN CONSTRUCTION

Similar Questions

- Working in planning and construction;
- Working in architecture firms.

The Issue

A Muslim living in non-Muslim countries may have to work in architectural firms which design and construct buildings. The work may sometimes involve designing and constructing buildings where forbidden activities are carried out, such as public houses, gambling facilities, wine shops, temples of pagan creeds, etc.

Ruling

It is not permissible for a Muslim to design or build the temples and houses of worship of non-Muslims or to contribute to the project financially or physically. This is clearly stated in Decision 23; 11-3 of the Islamic *Fiqh* Council. The same ruling is endorsed in Decision 9-5 of the Assembly of Muslim Jurists of America, which provides more detail. It says: 'It is not permissible for the Muslim owners of architecture and construction companies to design or construct buildings where forbidden activities are carried out, such as public houses, gambling casinos, wine shops, or temples where the worship of more than the One God is carried out. They may not take up any project that includes such activities, unless the company includes a non-Muslim partner who undertakes such projects as owner and executor, taking any profit and bearing any loss. Where such forbidden aspects constitute only a small portion of the work and it has not been possible to assign the work to non-Muslims, it may be exempted.

'If the building is initially planned for permissible uses and a small portion of the activities carried out in it are forbidden this is overlooked because this is very common and the need to work is great. Securing projects where only permissible activities are carried out is very difficult in some countries.

‘There is no harm in working for architectural and construction firms when the permissible and prohibited areas of the work may be mixed together, but the employee must avoid undertaking forbidden activities, such as designing and building public houses, casinos or temples.

‘If a Muslim employee in such a firm is assigned to design or construct a building that is used for forbidden purposes and he is unable to avoid this or to find an alternative job, he may be given an exemption on the basis of need, particularly if giving him such a project is a rare occurrence. However, if such forbidden projects are frequent and he cannot avoid them he must look for alternative work that will give him lawful earnings and earns him God’s pleasure. In the meantime he should dispense of the income he receives from such forbidden activities.’

Evidence

Working on projects that will be used for forbidden purposes furthers evil and aggression which God has forbidden, as He says: ‘Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.’ (5: 2) An exception is made in the decision of the Assembly of Muslim Jurists of America where it is permissible to work on some projects that involve a small portion of forbidden activities, on the basis of this being a common occurrence and the need to work is treated as necessity. Each case of necessity is determined on its own merits.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions by the Islamic *Fiqh* Council of the Muslim World League.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

108. WORKING AS A TAXI DRIVER

Similar Questions

- Working in passenger transport;
- Working as a driver in public transport.

The Issue

A Muslim living in a non-Muslim country may be working as a taxi driver. What is the situation where some passengers may carry or have on them something forbidden?

Ruling

It is permissible to work as a cab or taxi driver when a passenger is carrying or has some forbidden things about his person unless the passenger declares that he intends to commit an act that is forbidden. If the passenger mentions at the start that the driver will be requested to transport something forbidden, it is not permissible to accept him or the items. This is the ruling outlined in Decision 12-5 of the Assembly of Muslim Jurists of America. The Assembly outlined in its decision a number of manners and values it urged those who work in this field to observe.

Evidence

This type of work normally provides transport for passengers, which is a legitimate type of work, unless the passenger declares a forbidden purpose. What the passenger may carry or have about himself is overlooked, because the contract is not to transport such items in the first place. However, if the contract is initiated to transport what is forbidden then it is unlawful to accept such items.

Sources

- Decision by the Assembly of Muslim Jurists of America.
- Decisions by the European Council for Fatwa and Research.

109. OPERATING A FRANCHISE OR RESTAURANT SELLING FORBIDDEN FOOD

Similar Questions

- Obtaining an agency to start a restaurant that sells some forbidden food;
- Taking up the franchise of a food chain that includes some forbidden items.

The Issue

A Muslim living in a non-Muslim country may apply for an agency or franchise that allows him to open a restaurant or a fast-food cafeteria which will sell some items of food or drink that are forbidden in Islam. On the other hand, what is the ruling regarding someone who has already done so and committed himself to a contract? Can he continue in such a business?

Ruling

In Decision 13 of the fifth convention, held in Manama, Bahrain, 1428 AH, 2007, the Assembly of Muslim Jurists of America stated that a Muslim may not make an application to open a restaurant or fast-food cafeteria which sells forbidden items of food or drink unless his application is limited to the food and drink that are permissible in Islam. If the regulations of the parent company do not allow giving an agency or franchise to someone that wants to exclude some of its products, but it is possible to have a non-Muslim partner who does not consider such products forbidden, then there appears to be nothing to prevent that. However, the non-Muslim partner should acquire these products and be their owner and manager, taking any accrued profit or incurred loss from them. These products should also be separated from the ones that are permissible so as not to cause any confusion.

A Muslim who has already entered into an agency or franchise contract with the parent company, and what he sells is mostly permissible items, may continue with his contract providing he observes the following controls:

1. The agency does not include selling wines or intoxicating drinks, even in small quantities:
2. He should do his best to persuade the parent company to agree to not supply him with prohibited items to sell:
3. He should do his best to reduce the quantities of these forbidden items and their promotion:
4. He should employ non-Muslims to attend to the preparation and sale of forbidden items:
5. He should dispense of any accrued profit from forbidden items and give it to charity.

Evidence

The prohibition of applying for an agency or franchise to sell products that include some forbidden items is based on the rule that forbids cooperation in furthering evil and aggression which states: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.' (5: 2) If a part of the ownership of such a place belongs to a non-Muslim, the prohibition discontinues.

When something is already in place some aspects are overlooked on the basis of continuity, while these cannot be overlooked at the time of initiating the arrangement. Hence, when a contract is already in existence the Muslim needs to observe the controls mentioned.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

110. LEASING A PROPERTY TO INSTALL CASH MACHINES

Similar Questions

- Leasing a place for some bank units;
- Leasing to a bank a location to install cash machines.

The Issue

A Muslim living in a country with a minority Muslim community may lease a piece of land or part of his shop so it could be used to install cash machines run by different banks. People will use these machines to obtain cash using their cards.

Ruling

Letting space to install cash machines (ATMs) for people to obtain cash is permissible according to Decision 13-5 of the Assembly of Muslim Jurists of America, adopted at its fifth convention held in 1428 AH, 2007, in Manama, Bahrain, and Decision 5-18 of the European Council for Fatwa and Research.

Evidence

Such machines are permissible since they are mostly used to obtain cash, drawing it on the spot from one's own account or a loan. As such the cash machine is simply a tool for an individual to have ready money and if he has to pay interest on such a loan, this is done by the borrower. What the owner of the space receives for having such a machine is merely a fee for providing a service to people.

Sources

Decisions by the Assembly of Muslim Jurists of America.

- Decisions by the European Council for Fatwa and Research.

111. SELLING TO CUSTOMERS USING CREDIT CARDS

Similar Questions

- Buying and selling with credit cards;
- Credit card transactions.

The Issue

What is the position of a Muslim who accepts payment for the goods he sells through credit cards issued by banks? Nowadays such cards are frequently used to pay for goods or services instead of people carrying cash.

Ruling

Decision 13-5 of the Assembly of Muslim Jurists of America makes clear that it is perfectly permissible to receive the price of the goods one sells through payment by credit card.

Evidence

Since the money is received in a permissible way, nothing can be cited to justify prohibiting this method of payment since the normal situation is that such transactions are lawful.

Sources

- Decisions of the Assembly of Muslim Jurists of America;
- *Bitaqat al-I'timan wa Tatbiqatuha al-Masrifiyyah*.

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112. WORKING IN A JEWELLERY SHOP

Similar Questions

- Working in shops that sell gold and silver;
- Running and investing in a jewellery business.

The Issue

A Muslim living in a non-Muslim country may work in a jewellery shop which sells gold and silver. There is also the possibility of selling goods on credit and some articles of jewellery may have figurines or engravings that are forbidden.

Ruling

It is permissible for a Muslim to work or invest in such shops provided that the buyer and seller exchange goods and money in situations where such an exchange is required. Moreover, the jewellery sold must not have figurines or engravings belonging to creeds that are contrary to Islam. This ruling is stated in Decision 13-5 of the Assembly of Muslim Jurists of America adopted at its fifth convention in Manama, Bahrain in 1428 AH, 2007.

Evidence

Working in this type of business is perfectly permissible if the conditions and controls outlined in Islam are observed.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

113. SELLING FORBIDDEN ARTICLES AT PETROL STATIONS

Similar Questions

- Attracting customers by selling some articles that are forbidden to Muslims;
- Investing in projects that include selling forbidden articles.

The Issue

A Muslim living in a non-Muslim country may have a job in the shop that is part of a petrol station which sells forbidden articles such as cigarettes, lottery tickets, etc.

Ruling

It is not permissible for a Muslim who invests or works in the shops that are part of petrol stations, or anywhere else, to sell the lottery tickets or other forbidden articles that are normally sold in such places.

This ruling is stated in Decision 13-5 of the Assembly of Muslim Jurists of America adopted at its fifth convention held in Manama, Bahrain in 1428 AH, 2007. It is also the fatwa given by the late Shaikh Mustafa al-Zarqa.[148]

Evidence

When God prohibits something, He also prohibits its price, and so whatever is forbidden is also forbidden to sell. Moreover, selling what is forbidden helps others to commit a sin, as God says: ‘Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.' (5: 2)

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[148] M.A. al-Zarqa, *Fatawa*, p. 562.

Sources

- Decisions by the Assembly of Muslim Jurists of America
- Mustafa al-Zarqa, *Fatawa*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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114. LETTING A SHOP TO A PERSON SELLING SOME FORBIDDEN ARTICLES

Similar Questions

- Letting a shop for grocery or another business that includes selling some forbidden goods.

The Issue

A Muslim living in a non-Muslim country may rent a shop to someone to start a business. However, some aspects of this business may be forbidden in Islam. For example, the owner of a petrol station may lease out the shop that is part of the station to someone who runs a grocery business, and this lessee may sell tobacco, lottery tickets and similar forbidden articles.

Ruling

Decision 13 of the fifth convention of the Assembly of Muslim Jurists of America, held in Manama, Bahrain in 1428 AH, 2007 makes clear that there is nothing to prohibit leasing a shop to someone whose business is mostly in permissible articles, even though some articles he sells are forbidden in Islam.

Evidence

The contract of the lease is to carry out a permissible activity that brings benefit. The fault in this arrangement is born by the lessee alone.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

115. INSURANCE

Similar Questions

- Insurance policies;
- Commercial insurance;
- Cooperative insurance;
- Health insurance.

The Issue

A Muslim living in a non-Muslim country may need to take out an insurance policy, such as commercial, health, cooperative insurance, etc.

Ruling

A distinction must be drawn between cooperative insurance and commercial insurance. The first is permissible but the second is not, although commercial insurance does become permissible if it is compulsory and required by the law of the land.

This is the ruling of the Assembly of Muslim Jurists of America, expressed at its second convention (fourth topic) and in the second decision of its fifth convention. It is also the ruling of the European Council for Fatwa and Research, the Indian *Fiqh* Assembly and the late Shaikh Muhammad ibn Uthaimeen.[149]

The Assembly of Muslim Jurists of America and the European Council for Fatwa and Research also say that it is permissible to have insurance policies that may be essential, such as health insurance and some aspects of liability insurance, and the European Council for Fatwa and Research says it is permissible to have group insurance to bury the dead.

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[149] The European Council for Fatwa and Research, Decisions 2-20, 2-8 and 5-10, and Fatwa No. 9-12; The Indian *Fiqh* Assembly, Decision 17 (1-5); Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 85.

However, all councils are in agreement that Muslims should quickly establish insurance companies that apply the Islamic pattern of insurance to spare Muslims the need to have prohibited contracts. They also recommend that Muslims using such concessions in the interim period should ensure their insurance arrangements are with companies that apply some methods that are as close as possible to the cooperative insurance applied by Islamic insurance companies.

Evidence

Commercial insurance involves several suspect or forbidden aspects, such as uncertainty, usury, gambling and unlawfully taking other people's money, and as a result it is forbidden. What is permissible is only what is unavoidable because the law of the land makes it compulsory to have such insurance.

However, since a common need is treated as a necessity, when it is common to have health insurance, liability insurance or insurance to bury the dead, because one cannot meet the costs of burial or transporting the body to the deceased's country, and there is no cooperative insurance system available, then the alternative insurance is permissible, even if this includes forbidden aspects.

On the other hand, cooperative insurance is based on cooperation and mutual help and comes under helping one another in furthering goodness and piety. As such it is lawful and any aspect of uncertainty it involves is overlooked because it is treated as a donation.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions and Fatwas by the European Council for Fatwa and Research.
- Decisions of the Indian *Fiqh* Assemby.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.

116. BUYING A HOUSE WITH A USURIOUS LOAN

Similar Questions

- Borrowing from banks;
- Buying a house with a mortgage;
- Buying a house with usurious financing.

The Issue

A Muslim living in a non-Muslim country may want to buy a flat or a house. In most non-Muslim countries such financing is provided by a usurious arrangement with a bank where the loan obtained is repaid with interest over a long period and the buyer owns the house after the loan is settled. This is what is known as buying with a mortgage and the question that arises is one of permissibility of using usurious loans.

Ruling

Contemporary scholars have given two different opinions on this question.

The first view, which is the view of the majority of scholars, including the Islamic *Fiqh* Council and Shaikh Muhammad ibn Uthaimeen and other scholars,[150] makes it forbidden for a Muslim to buy a house through usurious financing in any situation.

Evidence

The texts that prohibit usury are all general in their import and they do not restrict the prohibition to a place or a period of time. They apply to all cases, as in the Qur'anic verses: 'God has made trade lawful and usury forbidden.' (2: 275) 'Believers, fear God and give up what remains outstanding of usurious gains if you are true believers.' (2: 278) The Prophet says: 'Steer away from the seven cardinal sins ...' and he includes usury as one of them. (Related by al-Bukhari, *hadith* No. 5,431) All these texts prohibit usury in general, without specifying any particular case.

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[150] Decision 23, 11-3 of the Islamic *Fiqh* Council; Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 83.

Since usury among Muslims and all other sinful practices are forbidden in the land of Islam, they are also forbidden to Muslims living in other lands as well. An analogous case is that of a non-Muslim who is living in the land of Islam under a pledge of security. It is unanimously agreed that it is forbidden to conduct any kind of usurious transaction with such a person. The same applies to a Muslim who is in a country at war: he may not enter into usurious dealings with its people. Al-Shawkani said: 'The provisions of Islamic law are binding on Muslims wherever they happen to be. Presence in the land of war does not abrogate Islamic law.'

The second view says that it is possible to use such usurious loans, and is expressed by the European Council for Fatwa and Research and the Assembly of Muslim Jurists of America, as well as other scholars.[151]

Scholars subscribing to this view make it a condition that there is necessity or a great need to take out a usurious mortgage, as in the case that the property being bought is for personal residence, that the borrower has no other place to live and that he does not have enough money to buy except through this arrangement. However, these scholars urge Muslims living in the West to do their best to establish alternatives that are acceptable to Islam, and if a person can rent without causing himself much hardship then he should be content to do so.

Evidence

It is an established rule, accepted by all schools of Islamic law and mentioned by al-Suyuti and Ibn Nujaym in *Al-Ashbah wal-Naza'ir*, that: ‘A public need is treated in the same way as a necessity.’ This rule means that a need is treated as a necessity in permitting what is normally forbidden. Such permission in a case of necessity is universally agreed, as stated in the Qur’anic verse: ‘He has clearly spelled out to you what He has forbidden you (to eat) unless you are driven to do so by sheer necessity.’ (6: 119) A need is defined as something that unless met a Muslim finds himself in difficulty, even though he will still live, while a necessity is something essential for life. A home is considered a basic need of man and when there are no legitimate alternatives for securing house ownership a Muslim will find himself in real difficulty. Therefore, this need takes the same ruling as a necessity until legitimate alternatives are in place.

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[151] Decision 2-5 of the Assembly of Muslim Jurists of America; *Fiqh al-Aqaliyyat*, pp. 154 and 168; M.A. al-Zarqa, *Fatawa*, pp. 621–6.

These scholars also rely on the Hanafi school of *Fiqh*, in a rule stated by Abu Hanifah and his disciple Muhammad ibn al-Hasan, making it permissible for a Muslim to deal with non-Muslims in non-Muslim countries on the basis of invalid agreements.

The scholars who consider this arrangement unacceptable from the Islamic point of view respond to the advocates of the second view in the following terms: With reagards to the rule that need is treated like a necessity they say that Muslim minorities have not yet reached a stage where there is need or necessity. As such their need has not become so pressing that it may be treated as a necessity to allow them to use usurious transactions. Houses are available in most of these countries and a Muslim who is unable to buy a house has other alternatives, even if this means travelling to other countries to avoid committing what God has forbidden. Moreover, individual and exceptional cases do not necessitate a general ruling, which should be only issued in widespread situations.

As to the argument that Muslims can deal with non-Muslims to take out usurious loans in non-Muslim countries, scholars opposing the second view say that this is also not permissible. They say it is clear that resorting to usury, even with non-Muslims outside the Muslim world, is forbidden because the clear texts forbidding usury do not make such an exception.

Even if the Hanafi view on this point is correct, to use it as a basis for such an argument is wrong. According to the Hanafi view a Muslim may take usury in these cases, but in the mortgage case the Muslim user pays usury. As such the two cases are different.

Sources

- Decisions by the Assembly of Muslim Jurists of America.
- Decisions by the European Council for Fatwa and Research.
- Decisions by the Islamic *Fiqh* Council.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.
- Mustafa al-Zarqa, *Fatawa*.
- Muhammad ibn Ali al-Shawkani, *Al-Sayl al-Jarrar al-Mutadaffiq [ala Hada'iq al-Azhar*.

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117. GIVING BANK INTEREST TO CHARITY

Similar Questions

- Can charities accept the interest money Muslims send them;
- Taking interest from banks and giving it to charity.

The Issue

A Muslim living in a non-Muslim country may receive interest on the money in his bank account. He may prefer to take this interest and use it for good causes, such as paying it to a charity. He might feel that this is preferable to leaving the interest with the bank, which may then use it to support some organization which carries out prohibited activities, like a Christian missionary organization.

Ruling

Scholars have two different views regarding taking the interest from one's bank account and giving it to charities.

The first view considers that it is not permissible to deposit one's money in a usurious bank in the first place. If one finds it necessary to do so in order to keep his money safe and he does not receive interest on it, then there is no harm. However, if the account earns interest, then it is not permissible. If he uses the funds that represent the interest, out of ignorance or carelessness, and then repents he should give the money to charity and not add it to his own account. This is the view of Shaikh Abd al-Azeez ibn Baz.[152]

Evidence

Usury is one of the gravest cardinal sins and God has prohibited it in His book, the Qur'an, and through His messenger. He tells us that usury will be blotted out and that anyone who deals in it is at war with God and His messenger. If a person takes usury out of ignorance or carelessness then realizes his fault he must not keep it with the rest of his money, because usury contaminates whatever money one has, and he must spend it on some good and charitable purpose. God says: ‘God blots out usury and causes charitable offerings to grow and increase. God does not love confirmed unbelievers who persist in wrongdoing.’ (2: 276)

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[152] A. Ibn Baz, *Majmu[Fatawa Ibn Baz*, vol. 19, pp. 420–2.

The second view considers it permissible to take interest from one’s account and give it to charitable organizations. It is also permissible for charitable organizations to ask people with usurious accounts to pay any interest they receive to them. This is the view of the European Council for Fatwa and Research, the Indian *Fiqh* Assembly and a number of contemporary scholars.[153] However, they say that money gained from interest payments may not be given to mosques to cover their expenses.

Evidence

The interest that can accrue on large sums of money is considerable. If it is left to the banks in non-Muslim countries, which are run by unbelievers or sinners, they may use it for purposes that are detrimental to Islam or Muslims, or they may use it to support unbelief or wrong creeds. Therefore, it is preferable that Muslims should take such interest and put it to good use.

Muslims living in the West need to open bank accounts and some accounts do earn interest. They are then faced with two alternatives; either they leave the interest accrued in their accounts to the banks, which will mean missing out on important benefits for Muslims, or they spend it on some good and charitable purpose. If the interest is left to the banks they may give it as a donation to some missionary organization or for other forbidden use. Since the prohibition on usury does not apply to the money itself, but rather to the way it is earned or spent, then the prohibition applies to the person who earns or spends it unlawfully. Hence what is forbidden with regard to such usurious earnings is when the person concerned uses it for his own purposes. As for other users, it is not forbidden.

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[153] The European Council for Fatwa and Research, Fatwa No. H. 7; Decision 5 (4-2) of the Indian *Fiqh* Assembly; *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars, p. 80; M.A. al-Zarqa, *Fatawa*, pp. 582, 586 and 601.

The condition that prohibits giving such interest money to mosques, as mentioned in the decision of the Indian *Fiqh* Assembly, is based on the fact that mosques are houses of worship. Therefore, to keep them pure such places should never be given any suspect money.

Sources

- The website of the European Council for Fatwa and Research: www.e-cfr.org.
- Decisions by the Indian Islamic *Fiqh* Academy.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.
- Mustafa al-Zarqa, *Fatawa*.
- Abd al-Azeez ibn Baz, *Majmu[Fatawa Ibn Baz*, edited by Muhammad al-Shuway'ir.

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118. PARTNERSHIP WITH NON-MUSLIMS

Similar Questions

- Buying partnership shares in companies run by non-Muslims;
- Buying a share of a foreign company.

The Issue

Is it permissible for a Muslim living in a non-Muslim country to be a partner in a company that undertakes legitimate activities through buying a shares of it? It should be remembered that non-Muslims may resort to funding such projects through money sourced from banks.

Ruling

It is permissible for a Muslim to become a partner in a commercial company when the source of funds provided by other partners may vary, with some legitimately earned and some borrowed at interest. However a condition applies here: The loans must not be secured against a mortgage of the company's assets. Moreover, the Muslim partner must have the authority to run the business, or to be able to monitor its activities to ensure that they are consistent with Islamic law. This is the ruling stated in Fatwa No. 1-16 of the European Council for Fatwa and Research.

The late Shaikh Abd al-Azeez ibn Baz said in his relevant fatwa: In principle, it is permissible for a Muslim to be in partnership in a commercial enterprise with a non-Muslim, provided that such partnership does not lead to a relationship of alliance or to commit or neglect something God has forbidden or made obligatory. Moreover, the Muslim partner should be the one who is in control. Nevertheless, it is preferable not to have such a partnership but rather to seek Muslim partners.[154]

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[154] Ibn Baz, *Fatawa Nur [ala al-Darb*, vol. 1, p. 377.

Evidence

In principle partnerships are permissible, but should they lead to a relationship of alliance, or in committing what God has forbidden, or neglecting what He requires, then making such a partnership becomes unlawful because of what it leads to. The condition that the Muslim partner should be in control is stipulated so as to ensure that no deception within the company takes place. However, scholars advise against making such partnerships in order to reassure a Muslim with regard to his faith and property, since a partnership with someone who is hostile to his faith represents a risk to his own values, religion and property. To be safe in all these areas one should steer away from such a partnership.

Nevertheless scholars make clear that going into partnership with a non-Muslim in a commercial company is permissible, even though the funds provided by the partners may mix what is earned legitimately from the Islamic point of view with funds borrowed at interest. However, the responsibility for prohibited borrowing lies with the non-Muslim partners who have obtained such loans and not with the Muslim. The condition for not securing loans by mortgaging the assets of the company is made because the mortgage remains in place when the Muslim partner joins the company and thus he becomes committed as the guarantor as such of a loan and it is well known that such borrowing is forbidden in Islam. It is forbidden to help in obtaining usurious loans, even by documenting or witnessing them, and to be a guarantor is of even greater help. The stipulation that the Muslim partner should have the authority to run the company or monitor its activities is to ensure that its activities, including securing banking and funding facilities, are consistent with Islamic law. This includes transactions such as term purchase and sale with deferred payment, etc.

Sources

- Fatawa of the European Council for Fatwa and Research.
- Abd al-Azeez ibn Baz, *Fatawa Nur [ala al-Darb*.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

119. RECEIVING UNEMPLOYMENT BENEFIT WHEN IN WORK

Similar Questions

- Claiming to be unemployed to get a job seekers allowance from the government;
- Lying in order to receive unemployment benefit.

The Issue

Some countries give those of its citizens and residents who are unemployed statutory benefits until they are back in work. Some people may try to exploit this, claiming such benefits while they are working and receiving wages, which they do not declare.

Ruling

It is obligatory for a Muslim who is earning wages through the work he does to inform the relevant government authorities of this. It is forbidden for a Muslim to claim unemployment benefit while he is in work unless his earnings are within the low-pay limits the government allows for those who are employed. This is the ruling of the European Council for Fatwa and Research.

Evidence

To be in work and claim unemployment benefit at the same time is against the law and a Muslim must always be a law-abiding citizen and honest in all his dealings, including the financial ones. It is forbidden for any Muslim to lie in order to obtain money that he is not entitled to receive.

Sources

- Fatawa by the European Council for Fatwa and Research.
- Abd al-Azeez ibn Baz, *Fatawa Nur [ala al-Darb*.

120. STUDENT LOANS

Similar Questions

- Students' scholarships;
- Financial support for students by non-Muslim governments.

The Issue

Muslim students in non-Muslim countries may be entitled to government student loans to pay their fees and cover their living expenses.

Ruling

It is permissible for Muslim students to obtain loans offered by non-Muslim governments to their citizens during their university studies, providing such loans are free of any usurious increase related to the living cost indicator. This is stated in Decision 4-18 of the European Council for Fatwa and Research.

Evidence

In principle, student loans are permissible if it is ascertained that such loans do not incur any usurious increase.

The law that organizes the repayment of student loans considers the student's situation, interests and ability to repay and a student will only be required to start repaying the loan when he or she is receiving a reasonable salary. Repayment is taken according to the level of earning and the conditions take into consideration the situation of the student who receives the loan, not the lending government.

Sources

- Decisions of the European Council for Fatwa and Research.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

121. UNLAWFUL EARNINGS

Similar Questions

- Unlawful money;
- Earnings through evil means.

The Issue

Some Muslims living in non-Muslim countries sell wines, port and other forbidden articles. As a result their spouses and children may feel uneasy about the legitimacy of living on such earnings.

Ruling

A man's wife and children who are unable to earn their own living through lawful means may live on the unlawful earnings of their husband or father. However, they must try their best to persuade him to find a different job that gives him only lawful earnings. This is the ruling stated in Decision 23 (11-3) of the Islamic *Fiqh* Council.

Evidence

In this sort of situation, if they do not live on his earnings they will harm themselves. This is clearly a case of necessity, which relaxes prohibitions.

Children have a rightful claim to be properly looked after by their father. If his earnings are unlawful then he is accountable for that and they have the right to benefit from it. He will be responsible for his deeds and they bear no responsibility because they are only taking what they are entitled to. This case is similar to that of a person who is owed some money by the father, either as an advance or against the price of goods or surety for something the father had damaged. The lender is fully entitled to obtain what he is owed, even if the money is illegitimately earned. The blame for the sin committed is totally with the one who earned the money unlawfully, but that money is perfectly legitimate for the one who is entitled to it. This comes under a *Fiqh* rule which says that money unlawfully earned through, for example, usury, bribery, cheating, etc. is forbidden for its earner but permissible for one who has a rightful claim to it, as in the case of the living expenses of one's wife and children, the price of something sold, surety for damage, rent, a loan, etc.

Sources

- Decisions by the Islamic *Fiqh* Council.
- *Fatawa al-Aqaliyyat al-Muslimah* by a number of scholars.

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122. THE LOTTERY

Similar Questions

- Gambling.
- Games of chance.

The Issue

Playing the lottery is essentially buying a ticket for a small amount of money hoping to win a large prize, or the jackpot, or anything else in the draw. Each ticket has a number and then the numbers are drawn and the winners get what they have won. Can a Muslim living in a non-Muslim country play the lottery?

Ruling

It is unlawful to play the lottery even though a portion of its income goes to good causes and charitable purposes. This is stated in Decision 7-14 of the Islamic *Fiqh* Council of the Muslim World League.

Evidence

Everyone who takes part in the lottery will either win a prize or lose whatever he pays. This is the criterion that is distinctive of gambling and since the lottery is a form of gambling it is forbidden in Islam.

The justification that some countries provide to run a national lottery is that a portion of its income goes to good causes and charitable purposes. However, this is rejected by Islamic law because gambling for any reason is forbidden. In pre-Islamic Arabia a winner from gambling – or what was termed *maysir*, i.e. game of chance – was expected to distribute his winnings to the poor. This is the benefit the Qur'an mentions as resulting from gambling: 'They ask you about intoxicants and games of chance. Say, "In both there is great evil although they have some benefits for people, but their evil is far greater than their benefit.”’ (2: 219) Hence God prohibited such games and all gambling because the harm in them is greater than the benefit. God says: ‘Believers: intoxicants, games of chance, idolatrous practices and divining arrows are abominations devised by Satan. Therefore, turn away from them so that you may be successful.’ (5: 90)

Sources

- Decisions of the Islamic *Fiqh* Council of the Muslim World League.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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123. WORKING IN CHURCHES AND MAUSOLEUMS

Similar Questions

- Working in places of paganism;
- Working in the places of worship of other religions.

The Issue

A Muslim living in a non-Muslim country may find a job in a church, mausoleum or other place of Christian or pagan worship. His work may involve cleaning these places on the inside or outside, for which he receives a salary. Is this permissible?

Ruling

It is not permissible for a Muslim to work in places of paganism or places of worship that address anyone other than God alone, including churches and mausoleums. Whatever earnings he receives for such work is considered unlawful. This is the ruling given by Shaikh Muhammad ibn Uthaimeen and Shaikh Salih al-Fawzan.[155]

Evidence

This type of work implies approval of falsehood and helping its people and a Muslim may not provide help for the people of falsehood. When an action is rendered invalid its earnings are unlawful.

Sources

- *Fatawa al-Da[wah*, a selection of fatwas by Shaikh Muhammad ibn Uthaimeen.

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[155] Ibn Uthaimeen, *Fatawa al-Da[wah*, vol. 3, p. 158; S. al-Fawzan, *Majmu[al-Fatawa*, vol. 2, p. 721.

- Salih al-Fawzan, *Majmu[al-Fatawa*.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fatawa al-Aqaliyyat al-Muslimah*.

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124. WORKING IN RESTAURANTS AND PLACES OFFERING WINES, PORK AND OTHER FORBIDDEN FOODSTUFF

Similar Questions

- Work in places serving some forbidden products;
- Work that involves handling what is forbidden.

The Issue

A Muslim may work in shops, supermarkets and restaurants in non-Muslim countries which serve some forbidden foodstuff, such as wines, pork and other drinks and meat. The work may require him to wash boards, plates and saucepans where pork is prepared, cooked or served. As he may be unable to find employment except in such places, is it permissible for him to do such work to make a living?

Ruling

Contemporary scholars have expressed two different views on this question:

The first view makes it unlawful for a Muslim to work in shops, supermarkets and restaurants which offer or serve any forbidden products. However, if a Muslim cannot find a job that is lawful from the Islamic point of view then he may work in such a place, provided that he does not serve, carry, brew, make or sell the wine or other forbidden products himself. He should also be unhappy with this work and resolve to leave it as soon as he can find alternative employment.

This view is stated in Decision 23 (11-3) of the Islamic *Fiqh* Council and Decision 12-5 of the Assembly of Muslim Jurists of America. The Assembly's decision says that there is no objection to work as a guard or cleaner, or do similar jobs in such shops and restaurants, but it is discouraged for a Muslim to wash plates and glasses that are used to serve forbidden items.

Evidence

This verdict of prohibition relies on the fact that such work helps evil and aggression, and giving such help is forbidden. Permissibility in the case of not being able to find another job is based on need and necessity, as well as the rule that says that necessity is considered on its own merits.

The ruling of the Assembly of Muslim Jurists of America that it is permissible to do guard and cleaning duties in such places relies on the fact that such work does not include any forbidden duties such as selling, carrying, preparing and serving the forbidden items. The discouragement of doing the washing up of plates and cups used to serve forbidden items is based on the issue that such works give indirect help in promoting what is forbidden.

The second view declares that it is not permissible to work in shops that sell wines or pork or similar products under any circumstances. The same applies to washing plates and cups used in handling such forbidden articles. This argument reasons that there is no necessity to compel anyone to do such work, God's earth is spacious and Muslim countries are numerous. As a result types of work which Islam permits are numerous in such countries and a Muslim should remain with the Muslim community in the country where permissible work is plentiful. This is the ruling of the Permanent Committee for Research and Fatwa and Shaikh Muhammad ibn Uthaimeen.[156]

Evidence

This type of work comes under the heading of furthering evil and aggression, which God has forbidden. He says: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.' (5: 2) Moreover, there is no necessity that compels a Muslim to take up such a job, as he can move to another country where permissible work is available. God says: 'For everyone who fears God, He will grant a way out, and will provide for him whence he does not expect. God will be sufficient for everyone who puts his trust in Him. God always attains His purpose. God has set a measure for everything.' (65: 2–3) He also says: 'For everyone who is God-fearing, God makes things easy.' (65: 4)

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[156] Fatawa by the Permanent Committee for Research and Fatwa, vol. 22, p. 100; Ibn Uthaimeen, *Fatawa al-Da[wah*, vol. 3, p. 158.

Jabir ibn [Abdullah reports that he heard the Prophet say in Makkah when it fell to Islam, 'God has forbidden the sale of wines, carrion, pig meat and idols.' (Related by al-Bukhari and Muslim)

Sources

- Decisions of the Islamic *Fiqh* Council.
- *Fatawa al-Da[wah*, a selection of fatwas by Shaikh Muhammad ibn Uthaimeen.
- Mut'ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama' al-Rabbaniyyin*.
- Fatawa by The Permanent Committee for Research and Fatwa.
- Abdullah Bin Bayyah, *Sina[at al-Fatwa wa Fiqh al-Aqaliyyat*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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125. BUYING AND CARRYING WINES FOR NON-MUSLIMS

Similar Questions

- Paying for wine bought by a non-Muslim;
- Carrying wine to a non-Muslim.

The Issue

Some Muslims living in non-Muslim countries may sit together in a cafeteria with friends who are not Muslims. Is it permissible for a Muslim to pay for the drinks consumed by all those present, including the wine the unbelievers drank? Moreover, some teachers may ask their students to bring them a drink that is forbidden. Is it permissible for a Muslim student to carry this to his non-Muslim teacher?

Ruling

It is forbidden for a Muslim to present or carry wine to his friends, whether they are Muslims or non-Muslims or whether it takes place in a cafeteria, at home or at any other place. It is also not lawful for him to pay for any wine, even though he did not drink it himself. He should be selective in his friendships and not have bad friends so as to protect himself against committing sin. This is the ruling of the Permanent Committee for Research and Fatwa as stated in its *Fatawa*.[157]

Evidence

God has cursed wines and those who drink, serve, sell, buy or use the profits from such products. The Prophet has also cursed the one who carries wine and the one to whom it is carried. Moreover, this comes under the heading of furthering evil and aggression, which God has forbidden as He says: ‘Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.’ (5: 2)

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[157] Permanent Committee for Research and Fatwa, Fatawa vol. 22, pp. 94–8.

Sources

- Fatawa by The Permanent Committee for Research and Fatwa.
- Mut’ib al-Qahtani (ed.), *Is[af al-Mughtaribin bi Fatawa al-[Ulama’ al-Rabbaniyyin*.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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126. LETTING PROPERTY TO PEOPLE WHO COMMIT WHAT IS FORBIDDEN

Similar Questions

- Letting a shop to someone who carries out a usurious business or sells wine.

The Issue

A Muslim who owns property such as a house or a shop may let it to a tenant who carries out some forbidden activities, such as letting his property to a usurious bank or to someone who will sell wine, pork, etc.

Ruling

It is not permissible to rent property to a tenant who carries out forbidden activities, such as selling wines, drugs or pornography, or to someone who carries out usurious transactions. This ruling is stated by Shaikh Abdullah ibn Jibreen.[158]

Evidence

This comes under the heading of furthering evil and aggression, which God has forbidden. He says: 'Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression. Have fear of God, for God is severe in retribution.' (5: 2)

Sources

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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[158] Ibn Jibreen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 84.

127. SWINDLING AN UNBELIEVER IN A SALE

Similar Questions

- Using tricks against an unbeliever in trade;
- Cheating unbelievers in price.

The Issue

A Muslim living in a non-Muslim country may try to trick unbelievers when he sells items to them. For example, when selling a car the Muslim vendor may ask another Muslim to bid a higher price against non-Muslims, although they have no intention of buying it, to secure a better price for their fellow Muslim.

Ruling

It is not permissible for a Muslim to resort to swindling anyone, even though he may be an unbeliever. This is the ruling given by Shaikh Muhammad ibn Uthaimeen.[159]

Sources

- *Fatawa al-Aqaliyyat al-Muslimah*, by a group of scholars.
- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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[159] Ibn Uthaimeen, *Fatawa al-Aqaliyyat al-Muslimah*, p. 86.

128. WORKING FOR AN UNBELIEVER

Similar Questions

- Agreement to work for an unbeliever;
- Serving an unbeliever.

The Issue

Some Muslims in Muslim minority countries may need to work for unbelievers, say for an agreed number of hours at a specific hourly rate. What is the ruling concerning this type of work?

Ruling

There is nothing wrong with a Muslim being hired by an unbeliever for a specific task, if that task is permissible, such as erecting a fence, selling something permissible, etc. This is the ruling of the Permanent Committee for Research and Fatwa.[160]

Evidence

[Ali, the Prophet's cousin, worked as a labourer for a Jew, drawing water for him from a well for which he received some dates as payment. Ibn [Abbas reports: '[Ali agreed to work for a Jew, drawing water from a well, and getting one date for each bucket of water.' (Related by Ibn Majah and al-Bayhaqi)

This arrangement is a contract for a service against remuneration. As such, there is no humiliation to the Muslim and, therefore, it is permissible.

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[160] Fatawa by the Permanent Committee for Research and Fatwa, vol. 14, pp. 485–6.

Sources

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- Khalid Abd al-Qadir, *Fiqh al-Aqaliyyat al-Muslimah*.

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